INDEX.

PETITION FOR A WRIT OF CERTIORARI..... 1

Opinions Below 2

Jurisdiction 3

Statement 3

Statutes Involved 7

Questions Presented 7

Reasons for Granting the Writ..... 8

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI 11

Opinions Below 11

Jurisdiction 11

Statement 11

Specifications of Errors Intended to be Urged..... 11

Argument:

1. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court..... 12

2. The Circuit Court of Appeals has decided a federal question in conflict with the decision of this Court in *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515..... 12

3. The Circuit Court of Appeals has assumed jurisdiction denied to it by the Norris-LaGuardia Act, and contrary to the decision of this Court in *Milk Wagon Drivers' Union etc. v. Lake Valley Farm Products*, 311 U. S. 91..... 16

Conclusion 24

APPENDIX:

Sections 1, 2 and 7, First, of the Railway Labor Act of May 20, 1926, C. 347, 44 Stat. 577, as amended June 21, 1934, C. 691, 48 Stat. 1185, 45 U. S. C., Secs. 151-163 25

Sections 1, 2, 4, 5, 7, 8, 9 and 13 of the Norris-LaGuardia Act, of March 23, 1932, C. 90, 47 Stat. 70, 29 U. S. C., Secs. 101-115, inc. 31

Sections 1(4), 1(11), 1(18) and 1(20) of the Interstate Commerce Act (49 U. S. C. § 1 *et seq.*)..... 36

AUTHORITIES CITED.

Cases.

Brotherhood of Railroad Trainmen v. TP&W RR., 321 U. S. 50.....4, 22

Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products, Inc., 311 U. S. 91.....9, 16, 23

Virginian R. Co. v. System Federation No. 40, 300 U. S. 515 .....8, 12, 14

Statutes.

Interstate Commerce Act (49 U. S. C., Secs. 1 *et seq.*)..7, 36

Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347):

Section 240(a) 3

Norris-LaGuardia Act (Act of March 23, 1932, C. 90, 47 Stat. 70; 29 U. S. C., Secs. 101 *et seq.*).....7, 31

Railway Labor Act (Act of May 20, 1926, C. 347, 44 Stat. 577; Act of June 21, 1934, C. 691, 48 Stat. 1185; 45 U. S. C., Secs. 151 *et seq.*).....7, 25

BLEED THROUGH- POOR COPY

In the Supreme Court of the United States

No. .....

OCTOBER TERM, 1946.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE No. 926, *et al.*,

Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a corporation,

FARMERS GRAIN COMPANY, a corporation, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Circuit Court of Appeals For the Seventh Circuit.

May it Please the Court:

The petitioners herein are the Brotherhood of Locomotive Firemen and Enginemen, Local Lodge No. 926; Brotherhood of Railroad Trainmen, Local Lodge No. 27; Order of Railroad Telegraphers; Brotherhood of Railway Signalmen of America, Local No. 163; Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, Local Lodge No. 908; American Train Dispatchers Association; Brotherhood of Maintenance of Way Employees, Local Lodge No. 1141; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America, Local Lodge No. 360; International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Sheet Metal Workers; International Brotherhood of Firemen, Oilers and Shop Laborers; F. O. Fisher; Robert R. Reed; Fred

Sauers, Jr.; E. D. Nevens; A. N. Murphy; W. C. Keiser, and B. M. Jewell.

The respondents herein are the Toledo, Peoria & Western Railroad, a corporation; Farmers Grain Company, a corporation; Eli Leman and E. J. Schiltz, d.b.a. Corn Belt Elevator; Ben C. Taber and E. C. Taber, d.b.a. Taber Lumber Co.; W. Howard Oaks, d.b.a. Oaks & Sons; E. F. Kent, Bessie Kent, Paul Kent, Lee Kent, Helen Kent and O. M. Lyon, d.b.a. Kent Lumber & Coal Co.; Gridley Farm Tool Co., Inc., a corporation; Sam R. Honegger, Frank Honegger and Ben A. Roth, d.b.a. Honeggers' & Co.; Wilber H. Boies and Henry Blessman, d.b.a. Boies & Blessman; Secor Elevator Company; El Paso Elevator Company, a corporation; Western Grain Company, a corporation; Meadows Grain & Coal Company, a corporation; C. W. Parry, d.b.a. C. W. Parry & Son, and Louis Shulman, d.b.a. Fairbury Iron and Metal Company.

The petitioners pray that a writ of certiorari issue to review the judgment and decree of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above entitled cause, designated therein as No. 9114, reversing the decree of the District Court of the United States for the Southern District of Illinois, Northern Division (which appointed a receiver to operate the respondent railroad), and directing that a mandatory injunction issue requiring the railroad to provide transportation services to the respondent shippers, and that a supplementary injunction issue against the railroad's employees, these petitioners as their representatives, and others.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 158 F. 2d —, and may be found in the record at pp. ..... The findings of fact and conclusions of law, and the supplemental opinion, of the District Court are reported in 66 F. Supp. 845, and

BLEED THROUGH– POOR COPY

may also be found in the record at pp. ... and ..., respectively.

JURISDICTION.

The opinion and judgment or decree of the Circuit Court of Appeals were entered on November 20, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347).

STATEMENT.

This proceeding developed from a labor dispute which began early in 1941. (Finding par. 13, R. ....) A knowledge of certain of the historical developments in this dispute is essential to an understanding of the issues involved in this petition.

In October, 1940, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen were certified as the representatives of the enginemen and trainmen employees, respectively, of the respondent railroad (sometimes hereinafter referred to as the "TP&W"). Throughout the whole of this labor dispute the TP&W has been controlled and dominated in all respects by George P. McNear, Jr. (Finding par. 2, R. ....) From late 1940 to November, 1941, the Brotherhoods and the TP&W were unable to agree on rates of pay and working conditions. Following the commencement of war, the enginemen and trainmen abandoned a previous determination to strike, and agreed with the National Mediation Board to submit the dispute to arbitration. The TP&W refused arbitration, and then served notice that on December 29, 1941, its own proposed rates of pay and working conditions would go into effect. The enginemen and trainmen withdrew from service on December 28, 1941. (Finding par. 4, R. .....)

On January 3, 1942, the TP&W instituted an action in the District Court of the United States for the Southern

District of Illinois, Northern Division, for an injunction against its striking employees. This action ended with the decision of this Court in *Brotherhood of Railroad Trainmen v. TP&W RR.*, 321 U. S. 50, to the effect that the TP&W was not entitled to an injunction because it had not availed itself of every reasonable effort to settle the dispute. Despite urgent personal requests from the President of the United States and by the National War Labor Board, the TP&W refused to arbitrate, and on March 16, 1942, the President, by Executive Order, placed the TP&W under the management of the Office of Defense Transportation. (Finding par. 6, R. .....)

During government management, the rates of pay and working conditions put into effect on the TP&W were substantially the same as were in effect on the other railroads of the country. (Finding par. 8, R. .....) Eleven of the petitioning Brotherhoods, together with the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, became the designated representatives of all of the TP&W's crafts or classes of employees. During government management (March 22, 1942 to October 1, 1945) the TP&W's net operating profit was $7,650,000. (Finding par. 8, R. .....) The TP&W owns and operates 239 miles of railroad.

The government announced on September 6, 1945, that the TP&W was to be returned to private management. The Brotherhoods thereupon sent to George P. McNear, Jr., a letter requesting that he confer with them for the purpose of discussing the continuance of the rates of pay and working conditions then in effect. McNear responded by letter dated September 15, 1946, stating it would not be proper for the TP&W to make an agreement with the Brotherhoods, or for him to meet with them. (Finding, par. 9, R. .....) The employees voted to withdraw from service effective October 1, 1945. On September 28, 1945, the TP&W sent an attorney with certain proposals to the Brotherhoods,

BLEED THROUGH– POOR COPY

which were rejected. The employees withdrew from service on October 1, 1945, and with that act the carrier virtually ceased all transportation service. (Finding par. 9, R. ....) Efforts of the parties to compose their differences have not been successful, and the strike continues.

On February 20, 1946, a complaint was filed in the District Court of the United States for the Southern District of Illinois, Northern Division, by certain shippers situated along the line of the TP&W, against the TP&W and these thirteen Brotherhood petitioners with seven of their officers. The complaint alleged that the TP&W was failing to provide transportation and car service, and had abandoned the operation of its line, contrary to the Interstate Commerce Act. It prayed for appropriate equitable relief to compel resumption of transportation service, specifically asking that the District Court appoint a receiver to take possession of said carrier and re-establish its transportation service.

Thereafter, the TP&W filed an unverified cross-complaint against these petitioners, praying for an injunction against them and their members to restrain them from interfering with the operation of the TP&W. On June 6, 1946, the District Court entered its judgment dismissing the cross-complaint against petitioners and appointing a receiver to operate the TP&W. (R. .....)

The District Court found as a fact "that one of the principal reasons for the failure of defendant Railroad to operate its trains and provide rail service since October 1, 1945 has been that the Railroad did not have in its employ a sufficient force of trained and experienced Railroad workers to operate said trains and man its equipment, and that such insufficiency of workers was the result of the Railroad's unreasonable refusal in September, 1945 to meet the defendant Brotherhoods, and bona fidely engage in collective bargaining and that such insufficient force of workmen was also the result of the unreasonable and obstinate

attitudes of all defendants and their refusal to make concessions and their failure to genuinely negotiate and bargain for the joint welfare of the employees, the Railroad Corporation and the public." (Finding par. 11, R. .....)

The TP&W took an appeal to the Circuit Court of Appeals for the Seventh Circuit, and on September 4, 1946, that court entered its judgment reversing the judgment of the District Court both as to the appointment of the receiver and as to the dismissal of the cross-complaint. It remanded the case with directions to grant the injunctive relief prayed for by the TP&W in its cross-complaint against any interference with its operation by the employees or others. (R. ....)

Petitions for rehearing were filed by both the shippers and the TP&W, and on rehearing the Circuit Court of Appeals filed, on November 20, 1946, a new opinion in the case (Circuit Judge Major concurring in part and dissenting in part), vacating its judgment entered September 4, 1946. The judgment entered November 20, 1946, ordered the District Court to discharge the receiver, issue a mandatory injunction requiring the TP&W to provide transportation service, and issue supplementary injunctions restraining the employees, their representatives and others from interfering with operations of the TP&W while complying with the mandatory injunction. (R. ....)

The Circuit Court of Appeals' mandate issued November 27, 1946. The TP&W thereupon moved to dismiss its cross-complaint, and the motion was allowed by the District Court. On December 5, 1946, the District Court issued its mandatory injunction ordering the TP&W to provide transportation service, and also issued a sweeping supplementary injunction against all interference with the operation of the TP&W. (R. ....) The complaint upon which these mandatory and supplementary injunctions are predicated does not conform to the requirements of the Norris-La Guardia Act, nor have requisite findings of fact been made and other requirements of the Norris-LaGuardia Act

BLEED THROUGH- POOR COPY

conditioning the right of the federal courts to issue injunctions against employees and their representatives been complied with.

STATUTES INVOLVED.

This case involves the construction of the Interstate Commerce Act (49 U. S. C., Secs. 1 *et seq.*), the Norris-LaGuardia Act (Act of March 23, 1932, C. 90, 47 Stat. 70; 29 U. S. C., Secs. 101, *et seq.*), and the Railway Labor Act (Act of May 20, 1926, C. 347, 44 Stat. 577; Act of June 21, 1934, C. 691, 48 Stat. 1185; 45 U. S. C., Secs. 151 *et seq.*).

Pertinent sections of the Norris-LaGuardia Act, Railway Labor Act, and Interstate Commerce Act are set forth in the Appendix.

QUESTIONS PRESENTED.

1. When a railroad subject to the Interstate Commerce Act ceases to furnish transportation and car service because of a labor dispute which has led to a strike of the railroad's employees, may a court of the United States enjoin the railroad to cease the abandonment of its operation and provide transportation service in compliance with Secs. 1 (4), 1 (11) and 1 (18) of the Interstate Commerce Act?

2. May the court supplement its mandatory injunction directed to the railroad, by sweeping injunctions against the railroad's employees, their representatives and others, forbidding all forms of interference with the operation of the railroad, including its interchange services with connecting carriers, without observing and complying with the Norris-LaGuardia Act, or in violation of that Act, in the following particulars, to-wit:

(a) Without due and personal notice of the hearing on said injunctions having first been given, in a manner directed by the court, to the chiefs of those public officials of the counties and cities within which

the unlawful acts complained of have been threatened or committed, charged with the duty to protect complainant's property, as required by Section 7 of said Act.

(b) Without the plaintiffs expressly complaining of and setting forth in their bill of complaint the specific acts which the railroad's employees, their representatives and others, have been enjoined from engaging in, as required by Section 9 of said Act.

(c) Without the court finding as a fact that the railroad's employees, their representatives and others, have committed the unlawful acts which have been enjoined, as required by Section 9 of said Act.

(d) Without a finding of fact made by the court that as to each item of relief granted greater injury will be inflicted upon plaintiffs by the denial of relief than will be inflicted upon the railroad's employees and their representatives by the granting of relief, as required by Section 7 (c) of said Act.

(e) Without a finding of fact made by the court that complainants have no adequate remedy at law, as required by Section 7 (d) of said Act.

(f) Without a finding of fact made by the court that the public officers charged with the duty of protecting complainants' property are unable or unwilling to furnish adequate protection, as required by Section 7 (e) of said Act.

REASONS FOR GRANTING THE WRIT.

1. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

2. The Circuit Court of Appeals has decided a federal question in conflict with the decision of this Court in *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515.

BLEED THROUGH– POOR COPY

3. The Circuit Court of Appeals has assumed jurisdiction denied to it by the Norris-LaGuardia Act, and by the decision of this Court in *Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products, Inc.*, 311 U. S. 91.

Argument in support of these reasons is contained in our brief, *post*.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari should be granted to review the judgment of the Court below.

Louis F. Knoblock

Harold S. Heiss

Russell B. Day

Attorneys for Petitioners.

BLEED THROUGH- POOR COPY

In the Supreme Court of the United States

No. .....

OCTOBER TERM, 1946

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE No. 926, *et al.*,

Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a corporation,

FARMERS GRAIN COMPANY, a corporation, *et al.*,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

OPINIONS BELOW.

The references to the opinions of the Circuit Court of Appeals and the District Court are set forth in the petition at page 2.

JURISDICTION.

The grounds on which the jurisdiction of this Court is invoked are stated in the petition.

STATEMENT.

A statement of the case has been set forth in the petition and, in the interest of brevity, is not repeated here.

SPECIFICATIONS OF ERRORS INTENDED TO BE URGED.

The Circuit Court of Appeals erred:

(1) In holding that the respondent shippers were entitled to a mandatory injunction directed to the respondent railroad requiring it to furnish transportation service to the shippers.

(2) In failing to hold that a cessation of transportation service, following a strike of the railroad's employees, caused by the inability of the railroad and its employees to agree upon wages, rules and working conditions, is not a violation of the Interstate Commerce Act.

(3) In failing to hold that the respondent shippers' complaint involved or grew out of a labor dispute and that, in consequence, the jurisdictional limitations and conditions imposed by the Norris-LaGuardia Act must be observed before injunctive relief may be granted the shippers.

(4) In holding that the mandatory injunction directed to the respondent railroad should be supplemented by an injunction forbidding all manner of interference with the operation of the respondent Railroad.

ARGUMENT.

The argument herein presented is not addressed to the merits of the case, discussion of the merits being reserved for petitioners' brief in the event the writ is allowed, but is directed to the support of the reasons for granting the writ.

1. **The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.**
2. **The Circuit Court of Appeals has decided a federal question in conflict with the decision of this Court in Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515.**

The important federal question involved in the decision of the Circuit Court of Appeals may be stated thus: Are the rights of shippers to the transportation services which the Interstate Commerce Act requires railroads to furnish, superior to the right of railroads and their employees to bargain over wages, rules and working conditions, which includes the right to allow a strike and cessa-

BLEED THROUGH– POOR COPY

tion of transportation service to develop in the event the bargaining results in disagreement?

Section 1 (4) of the Interstate Commerce Act (49 U. S. C. § 1(4)) imposes upon carriers the "duty * * * to provide and furnish * * * transportation upon reasonable request therefor, * * *."

Section 1 (11) of the Act (49 U. S. C. § 1(11)) imposes upon carriers the "duty * * * to furnish safe and adequate car service * * *."

Section 1 (18) of the Act (49 U. S. C. § 1(18)) forbids carriers to "abandon all or any portion of a line of railroad, or the operation thereof, * * *" without authorization from the Interstate Commerce Commission. And Section 1(20) (49 U. S. C. § 1(20)) authorizes any court of competent jurisdiction to enjoin an abandonment of operations occurring without approval by the Commission.

The above statutes were added to the Interstate Commerce Act, or were last amended, by the Transportation Act of February 28, 1920 (C. 91, 41 Stat. 478).

Another law of presumably equal dignity and obligation to that of the Interstate Commerce Act, is the Railway Labor Act as amended (45 U. S. C., Secs. 151, *et seq.*). While the principal purpose of the Railway Labor Act is the avoidance of "any interruption to commerce or to the operation of any carrier engaged therein," (Sec. 2(1)), nevertheless the essential scheme of the Act by which Congress hoped to achieve its declared purpose was adopted with express recognition of the right of management to disagree with its employees on the terms of employment, and of the right of employees to withdraw from service should they choose to do so as a result of such disagreement.

Section 2, First, of the Railway Labor Act provides, "It shall be the duty of all carriers, their officers, agents, and employees to exert *every reasonable effort* to make and

maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes * * *." Section 2, Second, further provides, "All disputes between a carrier or carriers and its or their employees shall be considered, and, *if possible*, decided, with all expedition, in conference between representatives designated and authorized so to confer, * * *."

The language of these statutes acknowledges that carriers and their employees may not be able to resolve their differences by agreement. But notwithstanding this acknowledgment of possible failure of the parties to agree, and the consequent interruption of the carrier's operations, the Act specifically disclaims a congressional purpose to compel agreement. Section 7, First, contains the proviso that "the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise." The right to strike is expressly preserved by the proviso in Section 2, Tenth, reading—"nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

Any doubt as to the meaning or significance of these provisos was put at rest by the decision of this Court in *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515, in which the point is repeatedly emphasized that while the Railway Labor Act requires the carrier to "treat with" the representatives of its employees, it does not forbid the carrier to withhold its assent to the terms of employment sought by its employees.

Thus, on the one hand are the general provisions of the Interstate Commerce Act requiring all railroads to furnish

BLEED THROUGH– POOR COPY

transportation service to the public. On the other hand is the more lately enacted Railway Labor Act, which not only embraces collective bargaining between carriers and their employees as a national policy, but compels the establishment of wages, rules and working conditions in conformity with a statutory plan of bargaining procedure. The Circuit Court of Appeals has construed the general provisions of the Interstate Commerce Act as imposing an unqualified obligation upon railroads to provide transportation service. This construction substantially destroys a cardinal right which the Railway Labor Act has bestowed upon those subject to it.

For the railroads, it destroys the right to bargain collectively, including the privilege of refusing to agree to terms or conditions demanded of them by their employees, in all instances save those rare few when the railroad is able to secure enough strike-breaking employees to furnish the transportation service required of it by the public, notwithstanding the strike of its regular employees. In all other instances, the right to bargain will be a relatively hollow right because of the imminent threat of being compelled by injunction to provide the transportation services required of railroads by the Interstate Commerce Act.

For the employees, it destroys to a substantial degree the right to bargain and the right to strike, for the exercise of these rights would perforce be undertaken in the face of a court compelled by law to exercise to the full its strike-breaking power.

There is thus posed a question of federal law, the answer to which will have an important bearing upon the collective bargaining process as it is carried on throughout the railway industry, pursuant to the Railway Labor Act.

3. The Circuit Court of Appeals has assumed jurisdiction denied to it by the Norris-LaGuardia Act, and contrary to the decision of this Court in Milk Wagon Drivers' Union etc. v. Lake Valley Farm Products, 311 U. S. 91.

The mandate of the Circuit Court of Appeals required the District Court to issue a sweeping injunction against persons interfering with the operation of the respondent railroad. (R. .....) This action was beyond the jurisdiction of the Court for the reasons hereinafter set forth.[1]

---

[1] The truly effective injunction resulting from the Circuit Court of Appeals' mandate is the supplementary injunction against the employees, not the mandatory injunction against the railroad. The latter orders the railroad to do what it is already desirous of doing, and has tried unsuccessfully to do, to-wit, to operate. The mandatory injunction will, moreover, be a vain exercise of the court's jurisdiction if the strike of the employees continues to be effective. The supplementary injunction is all-inclusive in its prohibitions against interference with the normal operation of the railroad, by all persons aware of its existence. It is, of course, axiomatic that the mandatory injunction can be effective only to the same degree as the supplementary injunction, enforced by the harassing process of contempt, succeeds as a strike-breaking weapon.

The terms of the supplementary injunction (originally issued by the District Court, after receipt of the mandate, on December 5, 1946, and modified by order of December 27, 1946) directed against the employees, are as follows:

> "II. That the Defendants herein other than Defendant Railroad, namely, Brotherhood of Locomotive Firemen and Enginemen, Local Lodge No. 926; Brotherhood of Railroad Trainmen, Local Lodge No. 27; Order of Railroad Telegraphers; Brotherhood of Railway Signalmen of America, Local No. 163; Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, Local Lodge No. 908; American Train Dispatchers Association; Brotherhood of Maintenance of Way Employees, Local Lodge No. 1141; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America, Local Lodge No. 360; International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helper of America; International Brotherhood of Sheet Metal Workers; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; F. O. Fisher; Robert R. Reed; Fred Sauers, Jr.; E. S. Nevin; A. N. Murphy;

(*Continued on following page*)

BLEED THROUGH– POOR COPY

Section 9 of the Norris-LaGuardia Act reads as follows:

"No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibi-

---

(*Continued from preceding page*)

W. C. Keiser; and B. M. Jewell, and all persons to whom knowledge of this Injunction or any Writ issued pursuant hereto shall come, be and each and all of them are hereby commanded, enjoined and restrained from:

(1) Assaulting or attempting to injure by violence or otherwise any employe or officer of Defendant Railroad, or any person or persons seeking or desiring to enter the employ of Defendant Railroad;

(2) Intimidating or attempting to intimidate by violence, force, assault, threat or coercion, of any kind, any employe or officer of Defendant Railroad, or any person or persons seeking or desiring to enter the employ of Defendant Railroad, to prevent such employe, officer, person or persons from working for, or seeking or entering the employ of, Defendant Railroad;

(3) Molesting or threatening in any way by violence, force, assault, threat or coercion, of any kind, any member of the family of any employe or officer of Defendant Railroad, or of any person or persons seeking or desiring to enter the employ of Defendant Railroad, or in any way damaging or attempting to damage the home, residence or personal property of any of said employes, officers, person or persons or their families;

(4) Assaulting or attempting to injure, by violence or otherwise, any employe or officer of any shipper of Defendant Railroad, or any employe or officer of any carrier connecting with Defendant Railroad, to prevent such shipper or carrier from shipping, receiving or delivering shipments via, or interchanging with, Defendant Railroad;

(5) Intimidating or attempting to intimidate by violence, force, assault, threat or coercion, of any kind, any employe or officer of any shipper of Defendant Railroad, or any employe or officer of any carrier connecting with De-

(*Continued on following page*)

tion of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in sections 101-115 of this title."

The instant case unquestionably "grew out of" a labor dispute. A "labor dispute" is defined by the Act as including "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment."

(*Continued from preceding page*)

fendant Railroad, to prevent such shipper or carrier from shipping, receiving, or delivering shipments via, or interchanging with, Defendant Railroad;

(6) Molesting or threatening in any way by violence, force, assault, threat or coercion, of any kind, any member of the family of any employe or officer of any shipper of Defendant Railroad, or any employe or officer of any carrier connecting with Defendant Railroad, or in any way damaging or attempting to damage the home, residence or personal property of any of said employes or officers or their families;

(7) Assaulting or attempting to injure by violence or otherwise, or intimidating or attempting to intimidate, or molesting, interrupting, preventing, obstructing, interfering with or threatening, in any way, by violence, force, assault, threat or coercion, of any kind, any person or persons lawfully passing to, upon or from the property of Defendant Railroad, or transacting business in any manner with Defendant Railroad;

(8) In any manner interrupting, preventing, obstructing or interfering with, or attempting to interrupt, prevent, obstruct or interfere with, by violence, force, assault, intimidation, threat or coercion, of any kind, the maintenance, operation or improvement of the properties of Defendant Railroad, the movement of any locomotive, car, train, or other equipment or vehicle, of Defendant Railroad, or the shipment, receipt, delivery or transportation of interstate or intrastate commerce by Defendant Railroad;

(9) In any manner interrupting, preventing, obstructing, or interfering with, or attempting to interrupt, prevent,

(*Continued on following page*)

BLEED THROUGH– POOR COPY

With respect to the subject of the dispute between the respondent railroad and its employees, the District Court made the following finding of fact:

"The pleadings and evidence show that this dispute between the two defendants arose sometime in the beginning of the year 1941. The contention of both parties arose by reason of wages and working conditions proposed by the Railroad Company which finally resulted in a strike and walkout of two of the Brotherhoods in 1941." (Finding, p. 13, R. ...)

The complaint of the shippers concerns their inability to obtain transportation service from the respondent rail-

---

(*Continued from preceding page*)

obstruct or interfere with, by violence, force, assault, intimidation, threat or coercion, of any kind, the interchange of traffic between Defendant Railroad and any connecting carrier;

(10) Destroying, damaging, injuring, disarranging, or attempting to destroy, damage, injure or disarrange, in any way or manner, or by any means, any portion of the roadway, ballast, tie and track structure, switch, turnout or derail, bridge, telegraph or signal equipment, building, motive power, rolling stock, or any other equipment or structure used by Defendant Railroad;

(12) Singly, in groups, in combination or in conspiracy with each other or with any other person or persons, doing or attempting to do any of the acts herein prohibited;

"III. That all persons, firms or corporations whatsoever, to whom knowledge of this Injunction or any Writ issued pursuant hereto shall come, are hereby commanded, enjoined and restrained from interrupting, preventing, obstructing or interfering with, or attempting to interrupt, prevent, obstruct or interfere with, in any manner, the operation, maintenance or improvement by Defendant Railroad of its properties pursuant to this order;

"IV. That the Marshal of this Court is hereby authorized to employ such additional deputy marshals as may be necessary fully to carry out and enforce this order, the cost and expense of such additional deputy marshals to be borne as determined by the further order of this Court."

road, owing to the latter's engagement in a labor dispute with its employees.

The Act provides that a case "involves or grows out of a labor dispute" under the following circumstances, among others:

> "When used in this Act, and for the purposes of this Act—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; * * *" (Sec. 13 (a)).

This case does "involve persons" who are engaged in the same industry, to-wit, a railroad and its employees. Significantly, the Act does not read, "A case shall be held to involve or to grow out of a labor dispute *when the opposing parties* are engaged in the same industry, etc."

It may also fairly be said that this case "involves persons who are engaged in the same industry,—or *have direct or indirect interests therein.*" The respondent shippers have a "direct or indirect" interest in the railway industry, —in the operations of the respondent railway in particular. By their own admissions in the complaint, that interest is a vital one.

Proceeding upon the conclusion that the instant case "involves or grows out of a labor dispute," we return to observe the requirements of Section 9. The prohibitions which Section 9 permits a court to include in a restraining order or injunction are only "such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case."

The only active complaint in this proceeding upon which an injunction may be predicated is that filed by the respondent shippers, the railroad's cross-complaint having been dismissed at its request by permission of the District Court. (R. .....) The only allegations in the shippers'

BLEED THROUGH– POOR COPY

complaint pertaining to acts or conduct of the employees or their representatives are the following:

> "It is further averred that since October 1st, 1945 members of the defendant Brotherhoods have picketed the right of way of the defendant company. That State Police have been maintaining a guard and that on February 6th, 1946 two of such pickets were shot and killed and three other pickets were wounded by gunshot near Gridley, Illinois, arising out of the dispute between the defendant company and employees represented by other defendants." (Par. 9, R.....)
>
> "It is further averred that the resumption of the abandonment of interstate commerce and cessation of rail service October 1, 1945 by all defendants was the result of the refusal of the said George P. McNear, Jr., to meet and collectively bargain with representatives of employees in September, 1945 and the refusal of said McNear to recognize the other defendants as union representatives of the employers (sic) for collective bargaining. It is also alleged that such continued abandonment and cessation is also the result of the failure of defendant Brotherhoods and Unions since October 1st, 1945 to exert efforts to persuade said Mr. McNear to meet with them and collectively bargain." (Par. 12, R. .....)

Clearly these allegations in the complaint will not support, in the manner required by Section 9 of the Act, the sweeping injunction authorized by the Circuit Court of Appeals against the employees and these petitioners. These allegations are insufficient support for any form of prohibitory injunction against the employees and their representatives.

The judgment or decree of the Circuit Court of Appeals, and the injunctions issued pursuant thereto by the District Court, exceed the jurisdiction of these courts because they violate Section 7 of the Norris-LaGuardia Act. The pertinent portions of Section 7 read as follows:

> "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction

in any case involving or growing out of a labor dispute, as herein defined, * * * except after findings of fact by the court, to the effect—

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

Findings (c) and (d) have not been made by either the Circuit Court of Appeals or the District Court.

Regarding Finding (e), this Court stated in *Brotherhood of Railroad Trainmen v. TP&W RR, supra,* that "one major purpose of the (Norris-LaGuardia) Act was to prevent the use of injunction improperly as a strike breaking implement." The manifest purpose of limiting in this manner the jurisdiction of courts to issue injunctions is to prevent their use in all save those instances where it is demonstrated that the law enforcing agencies are unable to maintain peace between the parties involved in the labor dispute. On this subject, the District Court made the following finding:

"The Court finds from all the evidence, and the testimony of a number of Sheriffs, State Police Officers, Mayors and Chiefs of Police that the requests of all defendants conveyed to law enforcing officers were reasonably complied with, and that defendant Railroad's failure to operate was not justified by the Railroad's charge that public officials refused or were unable to perform their duty." (Finding, par. 10, R. . . .)

The Circuit Court of Appeals did not disturb this finding.

Section 7 is further violated in another respect. It provides that hearings on complaints in which temporary or permanent injunctions are sought "shall be held after

BLEED THROUGH– POOR COPY

due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property."

No form of notice of the hearing in the District Court was given by the shippers, or was directed by the District Court to be given, to the public officials contemplated by the foregoing provision, other than that certain law enforcement officials were summoned to testify as witnesses.

The mandatory and supplementary injunctions in their totality exceed in viciousness the labor injunctions the evils attendant with whose issuance induced passage of the Norris-LaGuardia Act. As strike-breaking implements they operate to the benefit of the TP&W, which stands in the posture of having pursued an obstinate, unreasonable and provocative policy in its labor relations (Conclusions of Law, par. 7). The affording of any injunctive relief to a litigant under such conditions violates not only established equitable principles but the policy defined in Sections 1 and 2 of the Norris-LaGuardia Act.

The fact that the activities of employees against whom an injunction is sought amount to a violation of some federal right of the plaintiffs, is no justification for the issuance of an injunction in violation of the Norris-LaGuardia Act. This Court has so held in the case of *Milk Wagon Drivers' Union, etc., v. Lake Valley Farm Products, Inc., supra,* in which was reversed a decision of the Circuit Court of Appeals for the Seventh Circuit, which had authorized injunctions, without regard for the Norris-LaGuardia Act, against persons picketing the plaintiff's dairy stores, on the justification that the defendants' activities constituted a secondary boycott in violation of the Sherman Anti-Trust Act. The situation in this case and the instant case are substantially parallel.

CONCLUSION.

It is respectfully submitted that a writ of certiorari should be issued.

LOUIS F. KNOBLOCK,
HAROLD C. HEISS,
RUSSELL B. DAY,
Attorneys for Petitioners.

BLEED THROUGH– POOR COPY

APPENDIX.

Sections 1, 2 and 7, First, of the Railway Labor Act of May 20, 1926, C. 347, 44 Stat. 577, as amended June 21, 1934, C. 691, 48 Stat. 1185, 45 U. S. C., Secs. 151-163.

DEFINITIONS.

SECTION 1. When used in this Act and for the purposes of this Act—

First: The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory,

or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the District Court of the United States for the District of Columbia; and the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia.

This Act may be cited as the "Railway Labor Act."

BLEED THROUGH– POOR COPY

"GENERAL PURPOSES.

"Sec. 2, (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES.

"Sec. 2, First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representa-

tives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers, or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative

BLEED THROUGH– POOR COPY

or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representa-

tive so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000, nor more than $20,000, or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided,* That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an il-

BLEED THROUGH-- POOR COPY

legal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Sections 1, 2, 4, 5, 7, 8, 9 and 13 of the Norris-LaGuardia Act, of March 23, 1932, C. 90, 47 Stat. 70, 29 U. S. C., Secs. 101-115, inc.

SEC. 1. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this Act, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his

fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

BLEED THROUGH– POOR COPY

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make

BLEED THROUGH– POOR COPY

every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

Sections 1(4), 1(11), 1(18) and 1(20) of the Interstate Commerce Act (49 U. S. C. § 1 *et seq.*).

"Par. (4). It shall be the duty of every common carrier subject to this chapter engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this chapter participating therein which shall not unduly prefer or prejudice any of such participating carriers.

"Par. (11). It shall be the duty of every carrier by railroad subject to this chapter to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

"Par. (18). No carrier by railroad subject to this chapter shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under

BLEED THROUGH- POOR COPY

this chapter over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment.

"Par. (20). The commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both."

FILE COPY

FILED

FEB 14 1947

CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

No. 21

OCTOBER TERM, 1946.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE No. 926, *et al.*,

Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a corporation,

FARMERS GRAIN COMPANY, a corporation, *et al.*,

Respondents.

REPLY TO ANSWER OF RESPONDENT RAILROAD TO MOTION OF PETITIONERS FOR ORDER AUTHORIZING ABBREVIATION OF PRINTED RECORD.

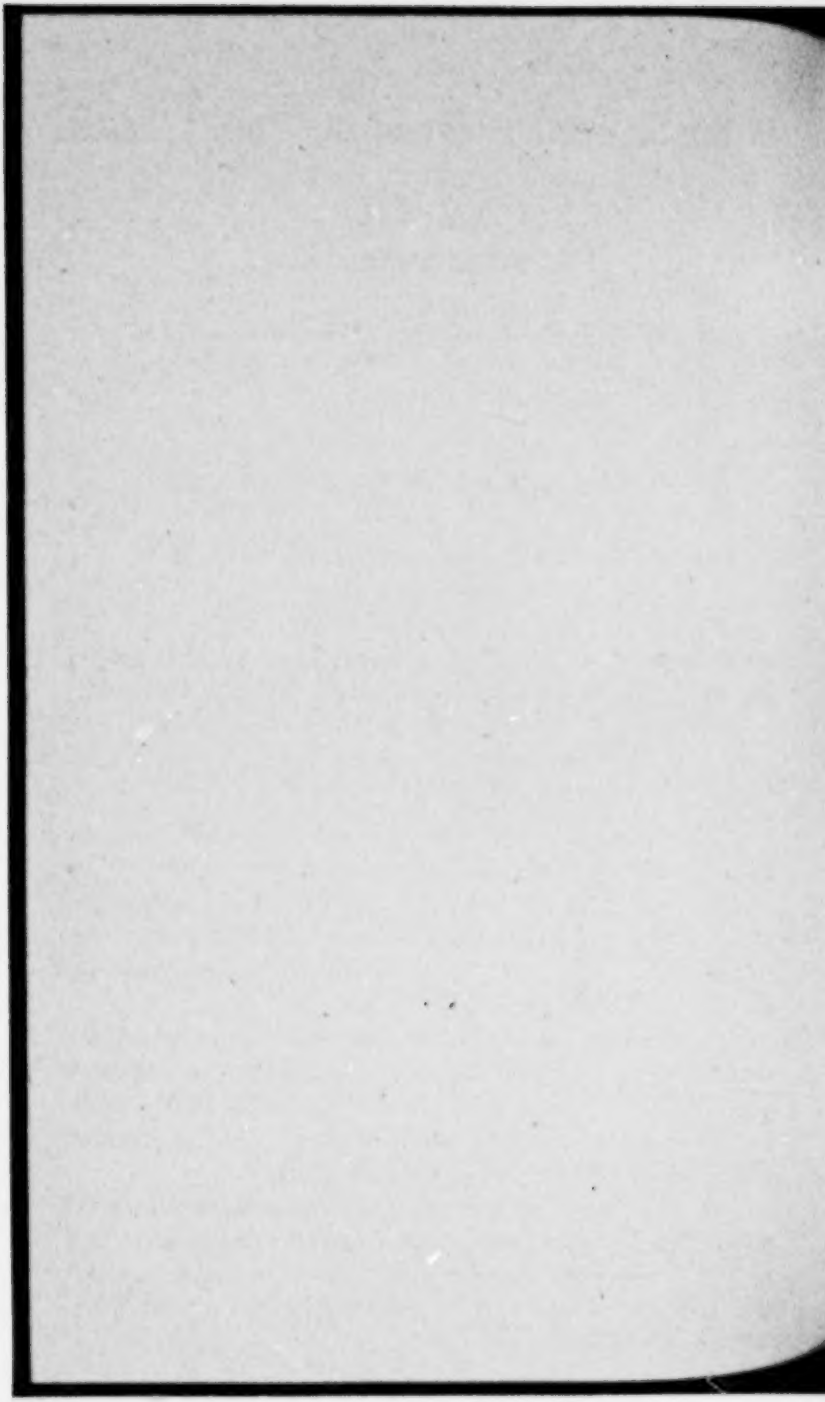
LOUIS F. KNOBLOCK,
Jefferson Building,
Peoria, Illinois,

HAROLD C. HEISS,
714 Keith Bldg.,
Cleveland 15, Ohio,

RUSSELL B. DAY,
714 Keith Bldg.,
Cleveland 15, Ohio,

Attorneys for Petitioners.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 9647



BLEED THROUGH- POOR COPY

In the Supreme Court of the United States

No. 908.

OCTOBER TERM, 1946.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE No. 926, *et al.*,

Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a corporation,

FARMERS GRAIN COMPANY, a corporation, *et al.*,

Respondents.

REPLY TO ANSWER OF RESPONDENT RAILROAD TO MOTION OF PETITIONERS FOR ORDER AUTHORIZING ABBREVIATION OF PRINTED RECORD.

May It Please The Court:

The respondent railroad opposes petitioners' motion for an order by this Court authorizing abbreviation of the printed record, on two grounds. The first is that no reasonable or adequate effort has been made by petitioners' counsel to arrive at a stipulation with counsel for respondents, as required by Rule 38 of this Court.

A recital of the efforts by petitioners' counsel in this respect seems justified, and such is accordingly hereinafter presented in the form of an affidavit by Mr. Louis F. Knoblock, one of the attorneys for petitioners. The original of this affidavit has been filed with the Clerk.

By this affidavit the Court is informed that petitioners' counsel endeavored throughout a period of more than two months (November and December, 1946) to induce counsel for the respondents to agree upon a stipulation to abbrevi-

ate the record. Counsel for the respondent shippers were adamant in their refusal to agree to anything approaching the concept of the petitioners' counsel regarding the contents of record for a presentation of the questions to be incorporated in the petition for a writ of certiorari. The effect of this attitude of counsel for the respondent shippers was to virtually foreclose petitioners' counsel from securing the desired stipulation, however compatible might be the views of railroad's counsel in this respect.

As set forth in the attached affidavit, the railroad's present counsel has only lately entered his appearance in the case, and his representations as to the extent and character of the petitioners' negotiations with railroad counsel in an effort to agree on a stipulation are, we believe, adequately answered by Mr. Knoblock's affidavit.

With respect to the railroad's second point, that the Circuit Court of Appeals did in fact alter the District Court's findings in one or more respects, our assertion to the contrary in the Motion For Order Authorizing Abbreviation of Printed Record was made upon the assumption that it would be read in the light of the questions which the petitioners desire to bring before this Court by certiorari. The Circuit Court of Appeals made no findings contrary to those made by the District Court which could reasonably be considered relevant to the questions set forth in the petition for a writ of certiorari.

The respondent railroad objects, also, to the record suggested by the petitioners' motion on the ground that it includes motions and orders in the District Court pursuant to the mandate issued on November 27, 1946. We point out in response that one of railroad's former counsel, in a Designation of Record dated December 20, 1946, filed in the Circuit Court of Appeals, requested the incorporation of these documents in the record on the petition for a writ of certiorari. Petitioners' counsel acquiesce in the designation, not with the thought that this Court would as-

BLEED THROUGH– POOR COPY

sume, in the event certiorari is granted, to review the orders of the District Court issued pursuant to the mandate, but because these motions and orders are the best source of information currently available to demonstrate the character and effect of the mandate from which the petition stems.

"AFFIDAVIT BY LOUIS F. KNOBLOCK.

STATE OF ILLINOIS, } ss.
COUNTY OF PEORIA, }

LOUIS F. KNOBLOCK, being first duly sworn on his oath according to law, deposes and states as follows:

My name is Louis F. Knoblock, and I am one of the attorneys representing the Petitioners in the above entitled cause.

In reply to representation made on page 7 of Respondent Railroad's Answer to Motion for Order Authorizing Abbreviation of Printed Record, where it is stated that no reasonable effort to secure a stipulation as to the omissions from the record to be printed has been made by the Petitioners, it is hereby stated by this affiant that counsel for the Respondent Railroad is plainly unacquainted with the facts and circumstances of this case, and it must be borne in mind that the attorney now representing Respondent Railroad is comparatively a newcomer in this case and very obviously does not know the facts and circumstances that existed prior to the entry of his appearance in this cause. It is hereby stated that as early as October, 1946, after this affiant had a conference with members of the office of the Clerk of the Supreme Court of the United States regarding this record, this affiant at that time immediately began negotiations to secure this stipulation for an abbreviation of the record, a member of the office of the Clerk of the Supreme Court of the United States having ad-

vised this affiant that all efforts should be made to secure such stipulation. That immediately upon this affiant's return to the City of Peoria, Illinois, this affiant contacted attorney Clarence W. Heyl of the City of Peoria, Illinois, who was then and there counsel for this Respondent Railroad. Numerous conferences were had between this affiant and attorney Heyl regarding an agreement for a stipulation to abbreviate this record, but representations were made to this affiant by said attorney Heyl that such a stipulation could not be obtained from his client and that no such agreement could be entered into. This position was maintained by counsel for said Respondent Railroad during the months of October and November, and practically all of the month of December, 1946. On or about December 27, 1946, the president of the Respondent Railroad discharged attorney Clarence W. Heyl from further employment in this case and Attorney Donald A. Morgan for the first time thereafter became identified with this litigation as far as this affiant is concerned.

Affiant further states that prior to the said Donald A. Morgan's appearance in this case, this affiant had for months previous thereto made strenuous and sincere efforts to secure this stipulation, but received no cooperation and no encouragement whatsoever from legal representatives of said Respondent Railroad. Furthermore, this affiant negotiated with attorney John F. Sloan, Jr., one of the attorneys representing the Respondent Shippers in this case, regarding such a stipulation and received a positive refusal to agree to any kind of stipulation unless a great portion of the testimony regarding the case of the Respondent Shippers against the Respondent Railroad were included in the printed record, which, in the opinion of this affiant and other counsel for the Peti-

BLEED THROUGH– POOR COPY

tioners, was wholly immaterial and irrelevant to the issues now presented to this Court. And it is further hereby stated that what counsel for the Respondent Shippers insisted be placed in the printed record, and what counsel for the Respondent Railroad insisted had to be made a part of the printed record, made it impossible to secure any kind of a stipulation toward an abbreviation of this record.

It is further stated that attorney Donald A. Morgan, now representing Respondent Railroad, being a newcomer in this case, apparently is not advised of all the effort that was expended over several months by this affiant in attempting to work out some kind of an agreement. The statement on page 3 of Respondent Railroad's Answer to Motion that this affiant represented that the stipulation as presented by this affiant to said attorney Morgan had to be agreed to precisely, without deletions or additions, is wholly untrue and without foundation. This affiant represented in fact that any deletions or additions that Respondent Railroad desired would be presented by this affiant to his associate counsel, but that such additions or changes would have to be made very promptly, for the reason that the time was rapidly expiring to present his Petition for Writ of Certiorari to this Honorable Court, and further, this affiant had very little hope or expectation of accomplishing anything in this regard as far as the Respondent Railroad was concerned, in view of the attitude that had been manifested by the Respondent Railroad for the past several months during the previous extensive negotiations.

This affiant further states that representations made on page 4 of Respondent Railroad's Answer to Motion, that negotiations between this affiant and attorney Morgan on January 7 and 8, 1947, were in the nature of an ultimatum for the acceptance or refusal

of the proposed stipulation is wholly untrue, and that said attorney Morgan, being such a newcomer in the case, at that time apparently had no knowledge of the extensive efforts that had been exerted prior to his appearance in said cause.

This affidavit is made for the purpose of presenting the facts and circumstances to this Honorable Court in support of the Motion now pending.

LOUIS F. KNOBLOCK.

Subscribed and sworn to before
me this 8th day of February,
1947.

EVA BUCHER,
Notary Public."

We believe it apparent from the foregoing that a substantial and good faith effort was made by petitioners' counsel to arrive at a stipulation for abbreviation of the record with counsel for the respondents; that this effort was without success; and that a large and needless expense will be incurred in the printing of the record unless this Court, by its order, authorizes abbreviation of the record by sustaining the petitioners' motion.

LOUIS F. KNOBLOCK,
HAROLD C. HEISS,
RUSSELL B. DAY,
Attorneys for Petitioners.

BLEED THROUGH- POOR COPY

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 18 1947
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1946.

No. [redacted] 21

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, *et al.*,
Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD,
a corporation,
and
FARMERS GRAIN COMPANY,
a corporation, *et al.*,
Respondents.

MOTION FOR ORDER AUTHORIZING ABBREVIATION OF PRINTED RECORD.

LOUIS F. KNOBLOCK,
HAROLD C. HEISS,
RUSSELL B. DAY,
Attorneys for Petitioners.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 5547

BLEED THROUGH- POOR COPY

In the Supreme Court of the United States

OCTOBER TERM, 1946.

No. .....

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, *et al.*,
Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD,
a corporation,
and
FARMERS GRAIN COMPANY,
a corporation, *et al.*,
Respondents.

MOTION FOR ORDER AUTHORIZING ABBREVIATION OF PRINTED RECORD.

Now come the Brotherhood of Locomotive Firemen and Enginemen, Local Lodge No. 926; Brotherhood of Railroad Trainmen, Local Lodge No. 27; Order of Railroad Telegraphers; Brotherhood of Railway Signalmen of America, Local No. 163; Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, Local Lodge No. 908; American Train Dispatchers Association; Brotherhood of Maintenance of Way Employees, Local Lodge No. 1141; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America, Local Lodge No. 360; International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Sheet Metal Workers; International Brotherhood of Firemen, Oilers and Shop Laborers; F. O.

Fisher; Robert R. Reed; Fred Sauers, Jr.; E. D. Nevens; A. N. Murphy; W. C. Keiser, and B. M. Jewell, petitioners, by their counsel, and move the Court for an order authorizing abbreviation of the printed record in this case, and as reasons therefor assign the following:

The respondents herein are Toledo, Peoria & Western Railroad, a corporation, one of the defendants in the District Court, and Farmers Grain Company, a corporation; Eli Leman and E. J. Schiltz, d.b.a. Corn Belt Elevator; Ben C. Taber and E. C. Taber, d.b.a. Taber Lumber Co.; W. Howard Oaks, d.b.a. Oaks & Sons; E. F. Kent, Bessie Kent, Paul Kent, Lee Kent, Helen Kent and O. M. Lyon, d.b.a. Kent Lumber & Coal Co.; Gridley Farm Tool Co., Inc., a corporation; Sam R. Honegger, Frank Honegger and Ben A. Roth, d.b.a. Honeggers' & Co.; Wilber H. Boies and Henry Blessman, d.b.a. Boies & Blessman; Secor Elevator Company; El Paso Elevator Company, a corporation; Western Grain Company, a corporation; Meadows Grain & Coal Company, a corporation; C. W. Parry, d.b.a. C. W. Parry & Son; and Louis Shulman, d.b.a. Fairbury Iron and Metal Company, plaintiffs in the District Court.

This cause is a petition for a writ of certiorari to issue for review of the judgment and decree of the United States Circuit Court of Appeals for the Seventh Circuit reversing the decree of the District Court of the United States for the Southern District of Illinois, Northern Division (which appointed a receiver to operate the respondent railroad) and directing that a mandatory injunction issue requiring the railroad to provide transportation service to the respondent shippers, and that a supplementary injunction issue against the railroad's employees, these petitioners, and others.

Printing of the record was dispensed with on order of the Circuit Court of Appeals. The record consisted of the transcript of testimony in the District Court presented over a period of one month, aggregating 2,927 type-

BLEED THROUGH– POOR COPY

written pages, together with several hundred exhibits. The pleadings in the record are numerous, and many of them voluminous. The pleadings, exhibits, the transcript of testimony, and other papers, are in the possession of the Clerk of this Court.

In order to avoid the heavy and unproductive expense involved in printing the entire record for the purpose of this case, counsel for these petitioners proposed to all counsel in the case that they endeavor to stipulate to omit from the printed record all matter not essential to a consideration of the questions presented by the petition for a writ of certiorari. A proposed stipulation was prepared by counsel for petitioners. Counsel for respondents have declined to agree to a stipulation and have proposed no alternative.

Two substantial questions will be presented by this case: *First*, the validity of the Circuit Court of Appeals' judgment and decree compelling the respondent railroad, by mandatory injunction, to provide transportation services to the respondent shippers, pursuant to Sections 1 (4), 1 (11), 1 (18) and 1 (20) of the Interstate Commerce Act (49 U. S. C., Secs. 1 *et seq.*), when the cause of the failure to provide transportation service is a labor dispute between the respondent railroad and its employees, in the course of which the employees have elected to withdraw from service in accordance with the provisions of the Railway Labor Act; *Second*, the validity of the Circuit Court of Appeals' judgment and decree requiring the issuance, supplementary to the mandatory injunction, of a sweeping injunction against the railroad's employees, their representatives and others, restraining all interference with the railroad's operations, without observance of the jurisdictional limitations contained in the Norris-LaGuardia Act (29 U. S. C., Secs. 101-115, inc.).

The District Court made elaborate findings of fact covering the essential developments during the whole period of the labor dispute between the respondent railroad and its

employees, from early in 1941 to date. These findings were not altered by the Circuit Court of Appeals, and they will, under the established procedure of this Court, be accepted as true. *Luckenbach v. McCahan Sugar Ref. Co.*, 248 U. S. 139.

The first question presented by this case is one of law, predicated upon the issues derived from the pleadings and the facts established by the District Court's findings. The second question, founded upon violations of the Norris-LaGuardia Act, will be resolved by consulting, so far as the record is concerned, the respondent shippers' complaint, the District Court's findings of fact, and the opinion of the Circuit Court of Appeals.

To print the entire record would involve the expenditure by these petitioners of many thousands of dollars, which is not essential to a determination of the substantial issues involved in the case. Such a determination can be had, without prejudice to the rights of any of the parties, by eliminating from the record to be printed the testimony and exhibits presented in the hearing in the District Court, and eliminating all of the pleadings and court orders, with the exception of the following:

February 20, 1946	Complaint.
March 20, 1946	Motion to Dismiss by all Defendants Other Than TP&W RR.
March 26, 1946	Amendment to the Complaint.
April 15, 1946	Answer of Defendant TP&W RR. Cross-Complaint of said railroad.
April 16, 1946	Answer to Plaintiffs' Complaint by all Defendants other than TP&W RR.
April 22, 1946	Additional Answer of all Defendants except TP&W RR and Answer of Defendant Brotherhoods and all Defendants other than Defendant Railroad, to Cross-Complaint.

BLEED THROUGH– POOR COPY

May 6, 1946	Motion of Defendant TP&W RR to Dismiss Plaintiffs' Action.
May 6, 1946	Motion by Defendants other than TP&W RR to Dismiss.
May 8, 1946	Order of Court.
May 16, 1946	Motion to Dismiss Cross-Complaint by Defendants other than TP&W RR.
June 6, 1946	Findings of Fact and Conclusions of Law filed by District Judge.
June 12, 1946	Notice of Appeal to Circuit Court of Appeals.
June 12, 1946	Order Directing that all Original Exhibits be forwarded to Clerk of Circuit Court of Appeals.
July 3, 1946	Supplemental Opinion of District Judge Adair filed in Circuit Court of Appeals on September 16, 1946.
Sept. 4, 1946	Opinion of Circuit Court of Appeals. Order of Circuit Court of Appeals.
Sept. 12, 1946	Motion of TP&W RR for immediate Issuance of Mandate together with the affidavit and suggestions attached thereto.
Sept. 13, 1946	Order for Immediate Issuance of Mandate.
Sept. 16, 1946	Order of the Circuit Court of Appeals directing its Clerk to forward the record to the Supreme Court of the United States.
Sept. 16, 1946	Designation of Record.
	Clerk's Certificate.
Sept. 18, 1946	Motion for Stay of Proceedings to Permit Application for Certiorari. Statement in Support.
Sept. 19, 1946	Order of Court recalling mandate and extending time for filing petitions for rehearing.

Sept. 20, 1946	Supplemental Designation of Record.
	Clerk's Certificate.
Sept. 30, 1946	Order of Court further extending time for filing Petitions for Rehearing.
Nov. 20, 1946	Order of Circuit Court of Appeals withdrawing its opinion of Sept. 4, 1946, and Vacating Judgment Entered Sept. 4, 1946.
Nov. 20, 1946	Judgment of Circuit Court of Appeals.
Nov. 20, 1946	Opinion of Circuit Court of Appeals.
Nov. 27, 1946	Order of Court denying Emergency Motion of Defendants-Appellees (petitioners herein) for stay of proceedings.
Nov. 27, 1946	Order of Circuit Court of Appeals that Mandate issue forthwith.
Nov. 27, 1946	Mandate of the Circuit Court of Appeals.
	Additional Designation of Record.
	Clerk's Certificate.
	Motion of TP&W RR and Order of District Court Dismissing its Cross-Complaint.
	Order of the District Court entered Dec. 5, 1946 at 12:15 P. M. for injunction.
	All motions filed in District Court by any of the parties relating to amendments or modification of the injunction order entered Dec. 5, 1946, together with all exhibits and affidavits attached thereto.

BLEED THROUGH– POOR COPY

Any orders which may be entered by the District Court on the Motions of Defendant Toledo, Peoria & Western RR., the Defendants Brotherhood of Locomotive Firemen and Enginemen, Local Lodge No. 926, *et al.*, or plaintiffs.

Dec. 20, 1946 Additional Designation of Record.

Clerk's Certificate.

There should be reserved to the several parties the right to refer in brief and argument, should they deem it necessary, to the exhibits of record, which exhibits have been certified by the Clerk of the Circuit Court of Appeals to this Court as the original exhibits, and have been filed with the Clerk of this Court.

For the reasons stated, these petitioners respectfully move this Honorable Court for the entry of an order authorizing abbreviation of the printed record in the manner herein proposed.

Louis F. Knoblock,
Harold C. Heiss,
Russell B. Day,
Attorneys for Petitioners.

FILE COPY

FEB 8 1947

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 908 21

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, ET AL.,
Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, A CORPORATION, AND FARMERS GRAIN COMPANY, A CORPORATION, ET AL.,
Respondents.

ANSWER OF RESPONDENT RAILROAD TO MOTION OF PETITIONERS FOR ORDER AUTHORIZING ABBREVIATION OF PRINTED RECORD.

DONALD A. MORGAN,
1125 First National Bank Bldg.,
Peoria 2, Illinois,
Attorney for the Respondent, Toledo, Peoria & Western Railroad.

THE DUNHOOP-WARREN PRINTING COMPANY, 330 WEST JACKSON, CHICAGO

BLEED THROUGH- POOR COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 908

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, ET AL.,

Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, A CORPORATION, AND FARMERS GRAIN COMPANY, A CORPORATION, ET AL.,

Respondents.

ANSWER OF RESPONDENT RAILROAD TO MOTION OF PETITIONERS FOR ORDER AUTHORIZING ABBREVIATION OF PRINTED RECORD.

MAY IT PLEASE THE COURT:

The Petitioners' motion is an attempt to avoid the normal and customary procedure on petition for a writ of certiorari, as prescribed in Rule 38 of the rules of this Court. That Rule provides in Paragraph 8:

> "Where it is necessary to print the record for the use of this court counsel should stipulate to omit from the printed record all matter not essential to a consideration of the questions presented by the petition for the writ, and when it is shown that unnecessary parts of the record have been printed although a reasonable

> effort was made by one of the parties to secure the printing of a proper record, such order as to costs may be made as the court shall deem proper."

In this case there was no printed record before the Circuit Court of Appeals. It is clear from the rule that Petitioners have the responsibility of furnishing to this Court a proper printed record sufficient for its consideration of the questions presented, that Petitioners should make a reasonable effort to obtain a stipulation of counsel as to what portions of the record should not be printed, and that their alternative upon a failure to obtain such a stipulation is to print the entire record and proceed against Respondents for costs. It is equally clear that Respondent Railroad has a duty to make a reasonable effort to stipulate, so as to secure a proper printed record, and upon its failure to do so to reimburse Petitioners for costs unjustly sustained.

Instead of complying with that rule, Petitioners are asking this Court to decide, without any record before it, that only a small portion of the record (and none of the testimony) is essential to a consideration of the questions involved in this case. Petitioners apparently seek to justify such a departure from the rule on the following grounds:

1. Counsel for Respondents have declined to agree to a stipulation; and

2. The findings of fact of the District Court are conclusive because they were not altered by the Circuit Court of Appeals.

The first of these grounds is not true; the second is a misconception of the opinion of the Circuit Court of Appeals.

Petitioners state, on page 3 of their motion, that their counsel proposed to all counsel in the case that they endeavor to stipulate as to the omissions from the record to be printed, that a proposed stipulation was prepared by

BLEED THROUGH- POOR COPY

their counsel, and that counsel for Respondents declined to agree to a stipulation and proposed no alternative.

Respondent Railroad has no means of knowing whether a form of stipulation of proposed omissions was prepared by counsel for Petitioners, but no such proposed stipulation was ever presented to, or seen by, Respondent Railroad or its counsel.

The accuracy of the two other statements can best be tested against the following specific facts:

At approximately 4:00 o'clock P. M. on January 7, 1947, Mr. Louis F. Knoblock, Petitioners' counsel in Peoria, Illinois, delivered to the office of counsel for Respondent Railroad, in his absence, a typewritten list of what appeared to be some of the items in the record of this case. That list was approximately the same as the list now contained in Petitioners' motion, except that it included approximately ten per cent of the testimony in the record.

At approximately 11:00 o'clock on the following morning, January 8, 1947, counsel for Respondent Railroad asked Mr. Knoblock what that list represented. Mr. Knoblock stated that it consisted of the items which Mr. Heiss (Petitioners' counsel in Cleveland, Ohio) believed were necessary in the record on Petitioners' application for certiorari. Counsel for Respondent Railroad advised Mr. Knoblock that he would be willing to work out a stipulation as to what should be contained in the printed record, but that he believed that some additional items would be needed. Mr. Knoblock stated that he had no authority to work out any stipulation, and that his definite instructions from Mr. Heiss were that if Respondent Railroad would stipulate that the record should contain the items described in that list, by not later than 3:00 o'clock in the afternoon on that day, a stipulation should be prepared and executed, but that unless Respondent Railroad agreed precisely to that list,

effectively rejected by the Circuit Court of Appeals when it stated:

> "It is undisputed that these troubles have never been alleviated by the officers referred to. Whether this was due to the officers' inactivity, inability or beyond the scope of their duty is immaterial at the present time. This condition has existed so long that it has become a stench in the nostrils of patriotic citizens of Illinois, and it should be stopped by due process of law." (158 F. (2d) 109, 118.)

In view of the discrepancies between the facts found by the District Court and those found by the Circuit Court of Appeals, there is no basis for Petitioners' contention that the findings of the District Court should be accepted by this Court as true. If these discrepancies are to be resolved, it would appear that this Court must have before it the pertinent testimony. The motion of Petitioners for abbreviation of the record does not contemplate the printing of any of the testimony. Such a record would be wholly inadequate for a proper review of this case.

Not only is the record suggested by Petitioners inadequate, but it is improper, because it includes motions and orders in the District Court pursuant to the mandate issued on November 27, 1946. Those motions and orders were not a part of the record before the Circuit Court of Appeals, whose judgment is herein sought to be reviewed, and they have not been certified as a part of any record to the Clerk of this Court. The District Court record of which they are a part discloses that an appeal was perfected by Petitioners from those orders to the Circuit Court of Appeals on January 18, 1947. Since those matters are now before that Court, they have no place in the record on this petition for certiorari.

It is, therefore, respectfully submitted that the motion of Petitioners for an order authorizing abbreviation of the

BLEED THROUGH— POOR COPY

printed record in this case should be disallowed for the following reasons:

1. No reasonable effort to secure a stipulation as to the omissions from the record to be printed has been made by Petitioners;

2. The record suggested by Petitioners is wholly inadequate for a consideration of the questions presented by the petition for a writ of certiorari; and

3. The record suggested by Petitioners is improper in that it includes matters not now subject to review in this Court.

DONALD A. MORGAN,
Attorney for the Respondent,
Toledo, Peoria & Western
Railroad.

FILE COPY

FEB 8 1947

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 908 21

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, ET AL.,
Petitioners,

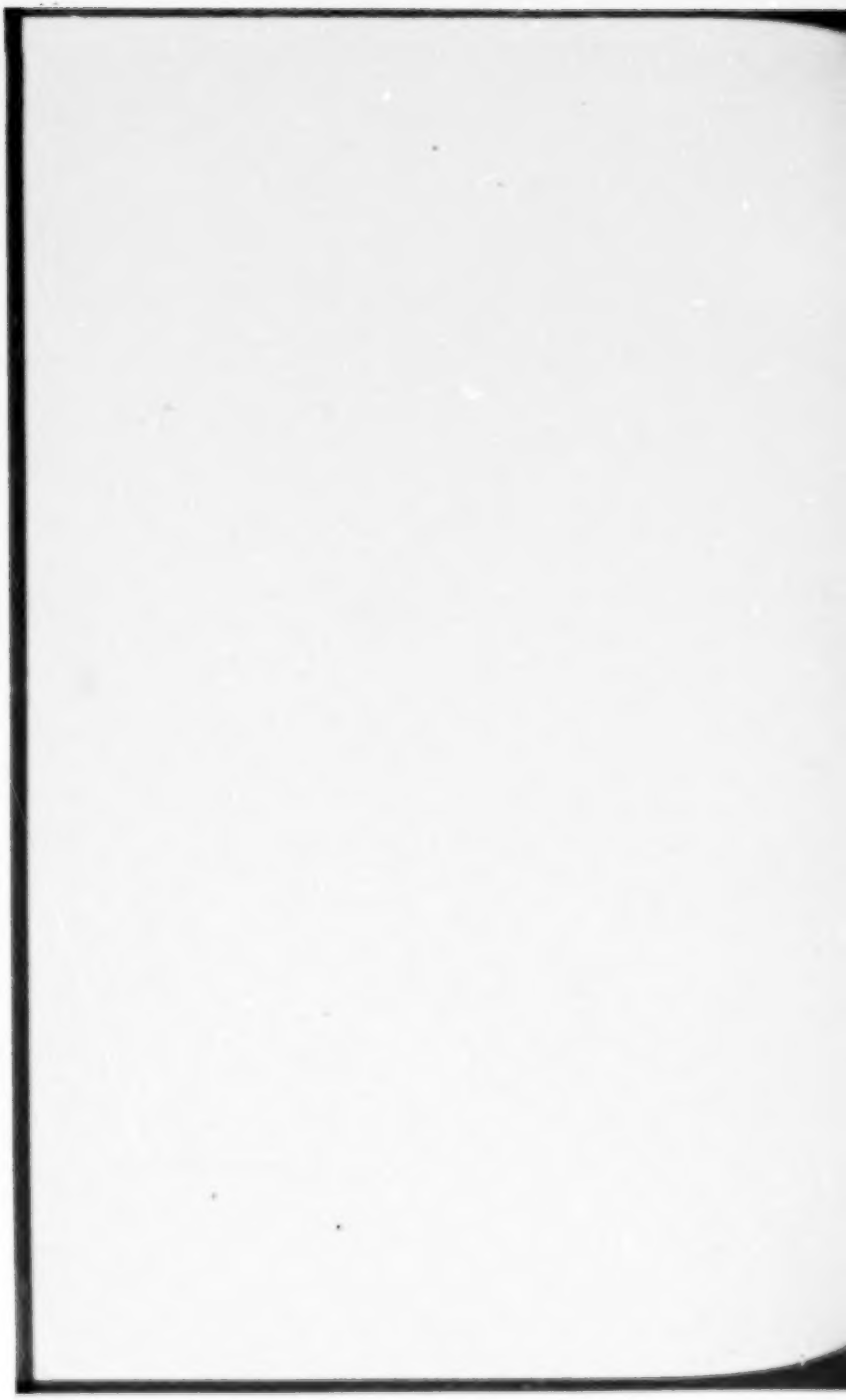
vs.

TOLEDO, PEORIA & WESTERN RAILROAD, A CORPORATION, AND FARMERS GRAIN COMPANY, A CORPORATION, ET AL.,
Respondents.

BRIEF OF RESPONDENT RAILROAD IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

DONALD A. MORGAN,
1125 First National Bank Bldg.,
Peoria 2, Illinois,
Attorney for the Respondent, Toledo, Peoria & Western Railroad.

THE DARNELL-WARREN PRINTING COMPANY, 310 WEST MONROE, CHICAGO



BLEED THROUGH= POOR COPY

INDEX.

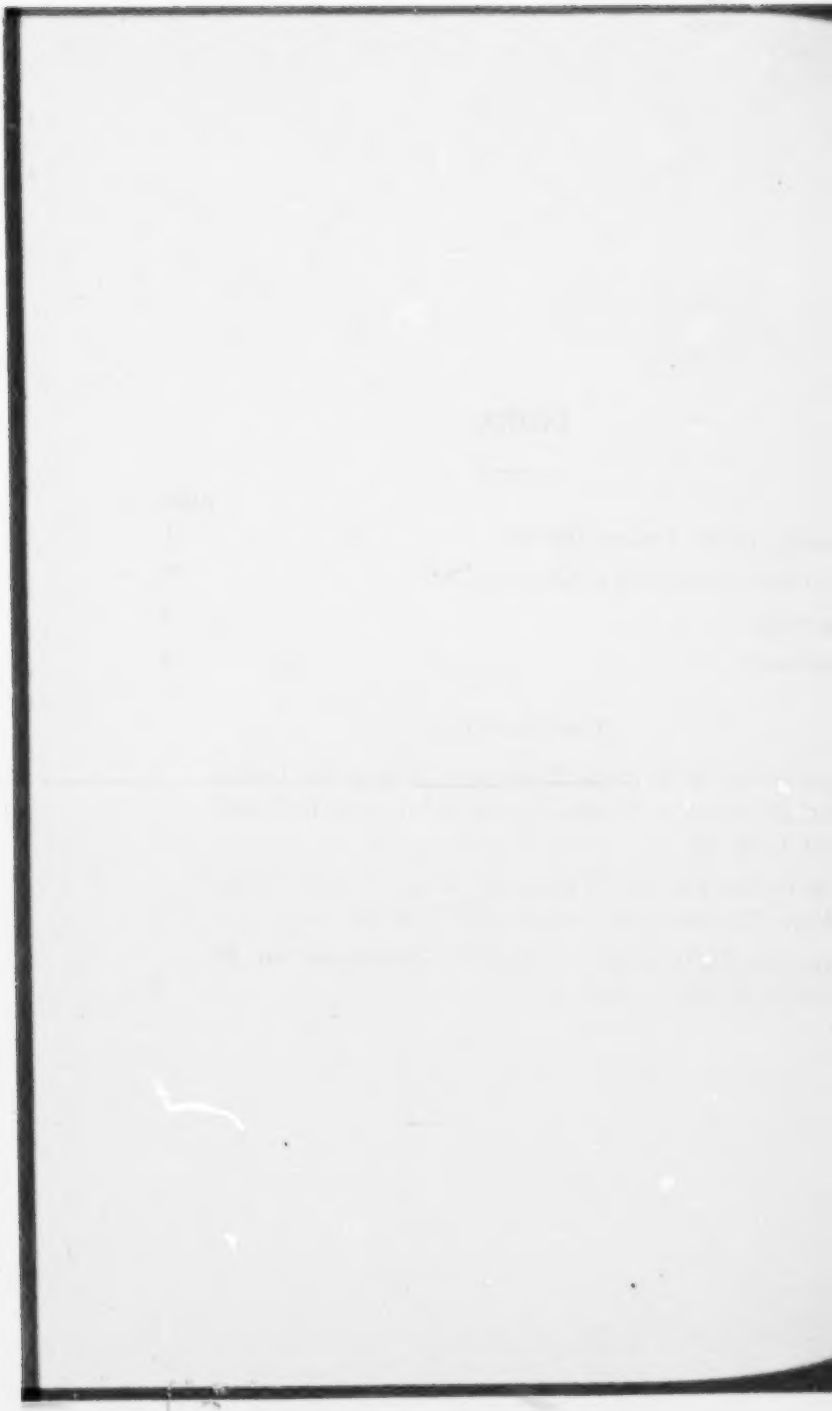
	PAGE
Opinions of the Courts Below	1
Additional Statement of the Case	2
Argument	5
Conclusion	9

Table of Cases.

Brotherhood of Railroad Trainmen, Enterprise Lodge, No. 27, et al. v. Toledo, Peoria & Western Railroad, 321 U. S. 50 3

Milk Wagon Drivers' Union, etc., et al. v. Lake Valley Farm Products, Inc., et al., 311 U. S. 91 ..... 7, 8

Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515 6



BLEED THROUGH- POOR COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 908

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, ET AL.,
Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, A CORPORATION, AND FARMERS GRAIN COMPANY, A CORPORATION, ET AL.,
Respondents.

BRIEF OF RESPONDENT RAILROAD IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals is reported in 158 F. (2d) 109, and the opinion of the District Court is reported in 66 F. Supp. 845. Inasmuch as no printed record has been prepared in this case, references to these opinions in this Brief are to the published reports.

ADDITIONAL STATEMENT OF THE CASE.

There being no printed record, Respondent Railroad is unable to furnish record references for such additional facts as are essential for this Court's consideration.

This case is one between Respondent Shippers as representatives of the public on one side and Petitioners and Respondent Railroad on the other. It is not an action between Petitioners and Respondent Railroad, and Respondent Railroad is not asking relief or review.

The suit was commenced by twenty-four shippers, along the line of Respondent Railroad, to secure equitable relief for the wrong suffered by them in the virtual cessation of transportation service on the only railroad available to them. Respondent Railroad, and the labor organizations who are now the Petitioners, were co-defendants in that suit to enforce the rights of the public established by the Interstate Commerce Act and other statutes. The evidence disclosed that railroad transportation service was not being furnished to the shippers and that they had suffered, and were daily suffering, large monetary losses and irreparable damages. The District Court concluded that the shippers were entitled to relief, appointed a Receiver to operate the railroad and issued an injunction restraining "all defendants, persons, firms and corporations" from interfering with the Receiver's possession or operation of the railroad. (66 F. Supp. 845, 856.)

The Circuit Court of Appeals agreed with the District Court that the shippers were entitled to relief, but held that under the established authorities, a receivership was improper. (158 F. (2d) 109, 116, 117.) The Circuit Court of Appeals ordered the issuance of a mandatory injunc-

BLEED THROUGH– POOR COPY

tion requiring Respondent Railroad to continue the operation of its road, and directed the issuance of the same kind of ancillary injunction protecting the operation as the District Court had ordered for the protection of the operation by the Receiver. (158 F. (2d) 109, 118, 119.)

Petitioners in their statement dwell upon difficulties between themselves and Respondent Railroad. Those difficulties are immaterial to any of the issues in this case between Respondent Shippers on the one side and Petitioners and Respondent Railroad on the other.

It should be sufficient, for the purposes of this case, to state that this Court held in 1944 that Respondent Railroad's activities constituted full compliance with all of the requirements of the Railway Labor Act and of Section 8 of the Norris-LaGuardia Act, except a willingness to arbitrate. *Brotherhood of Railroad Trainmen, Enterprise Lodge, No. 27, et al.* v. *Toledo, Peoria & Western Railroad*, 321 U. S. 50, 64. Since that time, Respondent Railroad has offered to arbitrate before an arbitrator appointed either by the senior federal judge of the district, or by the trial judge, or by the senior circuit judge, or by the Illinois Commerce Commission, or by the National Mediation Board under the terms of the Railway Labor Act. Petitioners rejected all of these arbitration proposals. In this connection, the Circuit Court of Appeals concluded:

> "Under these circumstances which are undisputed, we think it cannot be said that appellant (Respondent Railroad) failed either to negotiate, mediate or arbitrate as contemplated by the former decision in this case by the Supreme Court." (158 F. (2d) 109, 117.)

The opinion and judgment of the Circuit Court of Appeals entered September 4, 1946, referred to at page 6 of the Petition, were withdrawn and vacated on November 20, 1946. The only effective opinion and judgment of that

Court in this case are those entered November 20, 1946, which clearly order that a mandatory injunction be issued by the District Court, directing Respondent Railroad to furnish service as required by the Interstate Commerce Act, and providing that Respondent Railroad be "protected by an injunction against interference by anyone in the operation of the road." (158 F. (2d) 109, 118, 119.)

The orders of the District Court entered pursuant to the mandate of the Circuit Court of Appeals issued November 27, 1946, were not any part of the record considered by that Court in reaching its decision of November 20, 1946, and no record embodying them has been certified to this Court. The District Court record of which they are a part discloses that Petitioners have perfected an appeal from those orders to the Circuit Court of Appeals, and that said appeal is presently pending. Petitioners' references to those orders in their petition and brief to this Court are clearly improper. (Petition and brief, pp. 6, 16-19.)

BLEED THROUGH– POOR COPY

ARGUMENT.

This argument is directed only to a refutation of the points made by Petitioners as reasons for granting a writ of certiorari.

Respondent Railroad did not, and clearly could not, ask for the issuance of an order directing it to operate and provide transportation service, but there can be no denial of the right of the shippers to such relief. Respondent Railroad was unable to furnish effective transportation service before the issuance of the mandatory injunction, in spite of its efforts so to do, because of the breakdown of interchange with other railroads. Experience has shown, however, that complete service can be furnished under the mandatory injunction. For that reason, Respondent Railroad is unwilling, as anomalous as that may be, to voice any objection to this effective remedy for the wrong done to the shipping public, even though this remedy is an injunction directed specifically against Respondent Railroad.

Petitioners did not seek a review of the ancillary injunction issued by the District Court to protect the operation by the Receiver, yet Petitioners now contend that an important federal question is presented by the issuance of the same ancillary protection for the Court's mandatory injunction. Manifestly, the only distinction between the two must lie in the fact that the Receiver was expected to accede to Petitioners' every demand. The question of the validity of the two orders providing ancillary protection, in all other respects, under the Railway Labor Act and the Norris-LaGuardia Act, if they apply, is precisely the same. The ancillary protection directed by the Circuit Court of Appeals was issued not at the request of Respondent Rail-

road, but in connection with the remedy afforded to the original plaintiffs in accordance with their prayer for relief and to protect the order of court and make it effective. The course of conduct of Petitioners clearly shows that the "important question of federal law" is of consequence only when they are unable either to force settlement on their own terms or to prevent the interchange of traffic between Respondent Railroad and connecting carriers, all without regard for the consequences to the shipping public.

This case involves no novel or important question of law, but rather only the difference of opinion as to which remedy is to be afforded for the paramount right of the shipping public. The receivership ordered by the District Court was legally impossible under the long established authorities relied upon by the Circuit Court of Appeals. (158 F. (2d) 109, 116, 117.) The mandatory injunction ordered by the Circuit Court of Appeals is the traditional exercise of the inherent power of a court of equity and has proved to be an effective remedy for the shippers in this case. The ancillary protection in each case was the exercise of the power of a court of equity to prevent the frustration of its decrees.

The supposed conflict pointed out by Petitioners of the decision of the Circuit Court of Appeals with the Railway Labor Act and the decision of this Court in *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, is not real. The relative rights of Petitioners and Respondent Railroad are not affected by the decision of the Circuit Court of Appeals. Respondent Railroad retains the alternative of agreeing to the demands of the Petitioners or of attempting to replace Petitioners' adherents with others. Petitioners and their adherents retain the alternative of accepting the terms offered by Respondent Railroad or of collectively refusing to work for it. The opportunity for

FILED THROUGH POOR COPY

both parties to achieve some middle ground by collective bargaining is fully preserved. The rights of either party are qualified only to the extent necessary to assure the service to which the shippers are entitled under the terms of the Interstate Commerce Act. That limitation is inherent in the question of whether or not the public is entitled to transportation service under that Act, and that question has been answered in the affirmative by both courts below.

Petitioners contend that the case involves a "labor dispute" and for that reason the decision of the Circuit Court of Appeals is in conflict with the Norris-LaGuardia Act and the decision of this Court in *Milk Wagon Drivers' Union, etc., et al. v. Lake Valley Farm Products, Inc., et al.*, 311 U. S. 91. The most obvious defect in that contention is the fact that the issues in this case do not really involve any dispute at all. This case involves the question of whether the shippers are entitled to transportation service; Petitioners, Respondent Railroad and both lower courts have conceded that they are. The fact that some other dispute may exist between two co-defendants does not mean that the case involves that dispute. There is nothing in the Norris-LaGuardia Act to indicate that it was intended to prevent a court of equity from enforcing a statutory right merely because two of the defendants were engaged in a labor dispute. That Act must have been intended only to curtail the use of the injunction as a strike-breaking weapon in the hands of the employer involved. That was the situation in every case which has come before this Court for decision under that Act. That was the situation in *Milk Wagon Drivers' Union, etc., et al.* v. *Lake Valley Farm Products, Inc., et al.*, 311 U. S. 91.

The District Court and the Circuit Court of Appeals both necessarily believed that the Norris-LaGuardia Act, and the decisions of this Court construing that Act, were not applicable to this case; otherwise, the District Court could not have issued the ancillary order protecting the operation

under the receivership, and the Circuit Court of Appeals could not have directed the issuance of the ancillary order protecting the operation under the mandatory injunction. The Norris-LaGuardia Act, if applicable, would be jurisdictional and the relief ordered by both courts would be unavailable, regardless of the consequences to the public. The orders were undoubtedly issued by both courts, not as restraints on a labor organization engaged in a labor dispute, nor for the purpose of forcing a settlement of the dispute, but as a necessary adjunct to the relief to which they each believed the shippers were entitled.

Clearly the Norris-LaGuardia Act would be applicable in this case if it could be shown that the shippers were acting collusively for Respondent Railroad. The whole record, however, adequately disproves that remote possibility, particularly the fact that the shippers asked for and originally obtained a judicial seizure of Respondent Railroad for the purpose of settling the dispute between the defendants on Petitioners' terms.

Petitioners also contend that the Norris-LaGuardia Act is applicable for the reason that Respondent Shippers have "a direct or indirect interest in the railway industry." It is apparent from the whole record, however, that the Shippers' interest is only in the continued operation of the railroad under the Interstate Commerce Act. Respondent Shippers have no interest whatsoever in any labor dispute between Petitioners and Respondent Railroad, nor in the terms of any settlement between them. In *Milk Wagon Drivers' Union, etc., et al.* v. *Lake Valley Farm Products, Inc., et al.*, 311 U. S. 91, all of the plaintiffs therein were vitally concerned in a labor dispute between the plaintiff dairies and the defendant union and in the terms of the settlement between them. That vital interest in the labor dispute and its outcome has been present in every case which this Court has decided was governed by the Norris-

BLEED THROUGH– POOR COPY

LaGuardia Act. Only injunctive relief in protection or promotion of that interest is restricted by that Act.

Therefore, it is the earnest contention of Respondent Railroad that the Norris-LaGuardia Act is wholly inapplicable to this action by representatives of the shipping public to secure their right to transportation service, and that no conflict exists between the decision of the Circuit Court of Appeals and any decision of this Court.

Conclusion.

It is respectfully submitted that the relief granted to Respondent Shippers by the Circuit Court of Appeals is proper under the laws of the United States and the decisions of this Court, that the relief is an effective remedy for the wrong suffered by Respondent Shippers, and that the case should not be reviewed by this Court. The petition for a writ of certiorari should be denied.

DONALD A. MORGAN,

Attorney for the Respondent, Toledo, Peoria & Western Railroad.

INDEX.

	Page
Jurisdiction	1
Opinion below	1
Statement of the case	2
Summary of argument	5
Argument	6
I. Plaintiff and the public have a right to rail service	6
II. A court of equity has inherent power to take such steps as are necessary to make its decrees effective and consequently upon issuing a mandatory injunction against the railroad it had the power to restrain everyone from interfering with the operation of its decree	9

Cases Cited.

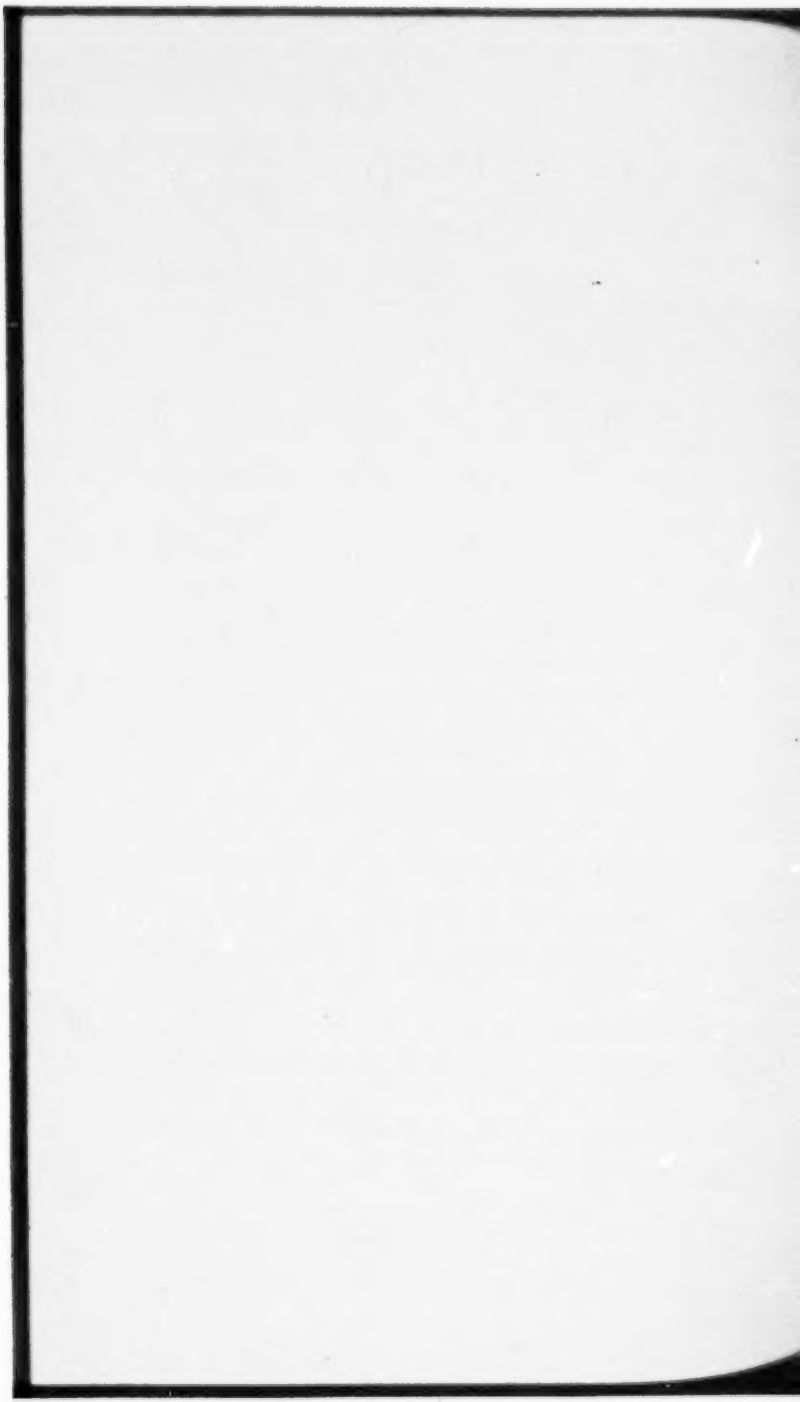
Loader v. Brooklyn Heights Railroad Co., 35 N. Y. S. 966	8
McCran v. Public Service Ry. Co., 122 Atl. 205	8
Olcott v. Supervisors, 16 Wal. 678	7
People v. New York Central and H. R. R. Co., 28 Hun. 543	8
Root v. Woolworth, 150 U. S. 404	10
U. S. v. Trans-Missouri Freight Assn., 166 U. S. 290	7

Text Cited.

24 Am. Jur. 226	7

Statute Cited.

Interstate Commerce Act, § 1 (4), § 1 (18)	8



BLEED THROUGH- POOR COPY

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1946.

No. 908.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, et al.,
Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a Corporation, and FARMERS GRAIN COMPANY, a Corporation, et al.,
Respondents.

BRIEF OF RESPONDENT SHIPPERS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JURISDICTION.

It is conceded by this respondent that this Court has jurisdiction in this cause to consider a Petition for Writ of Certiorari under Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925, Ch. 229, Section 1, 43 Stat. 938 (U. S. C. A., Title 28, §347).

OPINION BELOW.

The Circuit Court of Appeals opinion is reported in 158 F. (2d) 109, and the District Court in 66 F. Supp. 845.

STATEMENT OF THE CASE.

Petitioner's statement fails to inform the Court of facts which we deem essential to an understanding of this case. We therefore desire to make this brief statement.

On October 1st, 1945, the Toledo, Peoria & Western Railroad came to a standstill. Along its line from Effner, Indiana, across Illinois to Keokuk, Iowa, were many small towns, villages, farming communities and businesses dependent on it alone for rail transportation. Patiently the people waited for the railroad and the unions to compose their differences, but bickering and argument continued without result. In the meantime the public suffered. The little businesses dependent on the railroad struggled against the heavy losses they were sustaining daily. All attempts by governmental agencies to bring back rail services failed. Finally a group of 19 shippers practically all of whom had no other rail service, banded together in the hope that a federal court would grant them relief from what the District Court describes as "an intolerable situation." And so on February 21st, 1946, they filed suit in the District Court at Peoria, Illinois, to try to bring about a restoration of rail service. They alleged in their complaint that the Interstate Commerce Act gave them and the public a right to have rail transportation, that the same act prohibited the railroad from abandoning operation of the railroad. They alleged facts showing that the railroad owner had knowingly and intentionally pursued an arbitrary and unreasonable course of conduct which would only result in a stoppage of transportation. They also alleged that the unions also contributed to cause the hardship and suffering with which they and the public were burdened. Knowing the personalities involved and the peculiar circumstances of the case they asked the District Court to restore rail transporta-

BLEED THROUGH— POOR COPY

tion to them through a receiver as the most practical and effective remedy. They also asked for other general relief.

The District Court after hearing the testimony of a hundred or more witnesses and receiving in evidence several hundred exhibits found that plaintiffs had proved their case and had established that they had a right to rail transportation which the railroad had wrongfully failed to furnish them. The District Court after seeing and hearing all these witnesses and carefully considering the case concluded that under the circumstances the only practical and effective remedy for the shippers and the public was the operation of the railroad by the court itself through a receiver.

The Circuit Court of Appeals agreed with the District Court that plaintiffs had a right of action, but differed with it as to the form of remedy that should be granted to plaintiffs. It was that court's opinion that the District Court should have granted a mandatory injunction against the railroad instead of a receiver. They also held that to make this effective an injunction should be granted against the defendant unions and their officers and all other persons restraining interference with the operation of the railroad under the mandatory injunction. The petition filed in this court seeks a review of the latter part of this order and presents the question of the authority of a Federal Court under the Norris LaGuardia Act to enter such an injunction.

Respondent-shippers are primarily interested in obtaining a restoration of complete rail service. We are of the opinion that the only way this can be obtained is, as the District Court held—by operation through a receiver. The remedy ordered by the Circuit Court of Appeals—a mandatory injunction—we believe is inadequate. Conse-

quently, we soon will file with this Court a petition for a Writ of Certiorari asking that the judgment of the District Court be affirmed and the Circuit Court of Appeals be reversed. If this Court grants our petition and agrees with our position the question presented by petitioner unions here will not arise. On the other hand, we feel the relief granted by the Circuit Court of Appeals is better than none and wish to sustain it unless this court agrees that the form of remedy was within the discretion of the Trial Court and its judgment should not have been reversed.

BLEED THROUGH– POOR COPY

SUMMARY OF ARGUMENT..

I.

Petitioners attempt to question the issuance of a mandatory injunction against the railroad compelling it to furnish rail service. They are in no position to question an order entered against another party and which does not compel them to do anything.

Furthermore, even if they could raise the question, the rights of the public to continued rail transportation is paramount. It is the railroad's absolute duty to furnish the public with rail service which it cannot avoid by engaging in a labor controversy resulting in a strike.

II.

The Circuit Court of Appeals had authority to direct the District Court to issue an injunction against interference with the operation of its mandatory injunction. A Court has inherent authority to protect and effectively enforce its own decrees.

ARGUMENT.

I.

Plaintiff and the Public Have a Right to Rail Service.

The first question presented by petitioner is whether or not a railroad involved in a strike may be compelled by mandatory injunction to furnish transportation to the public or is the public forced to await the convenience of the railroad until it disposes of its labor dispute.

It is readily apparent that petitioner is in no position to argue this question. The mandatory injunction was granted against the railroad not the unions. One party cannot appeal from an order entered solely against another party. It is no concern of the unions what order the Circuit Court of Appeals directed to be entered against the railroad and therefore they have no standing to question it.

The raising of this question does, however, serve a beneficial purpose in this case. It brings into sharp focus the dominant issue in this case, i. e., the rights of the public. The Circuit Court of Appeals in its opinion was so concerned with discussing the labor controversy to the exclusion of the question of the rights of the public that Judge Major in his dissenting opinion stated:

> "The majority opinion, so I think, places too much stress upon the labor controversy existing between the railroad and its employees and fails to ascribe sufficient importance to the plaintiffs, the shippers, for whose benefit and on whose behalf the law imposes a positive duty to provide and furnish transportation."

Petitioners argue that the Railway Labor Act by inference recognizes that there will be strikes on railroads

BLEED THROUGH— POOR COPY

and that railroads are not compelled by the Act to reach an agreement with its employees. They then conclude that because of this the positive duty stated in the Interstate Commerce Act should be considered as amended to contain the proviso that the duty does not exist where the railroad was engaged in a labor controversy in which a strike had occurred.

Railroads are engaged in performing public functions and owe a different and greater duty to the public than an ordinary private business. In Olcott v. Supervisors, 16 Wal. 678, this Court stated:

> "That railroads, though constructed by private corporations and owned by them are public highways, has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence . . . The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used."

In U. S. v. Trans-Missouri Freight Assn., 166 U. S. 290, this Court states:

> ". . . they all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders. The business which the railroads do is of a public nature closely affecting almost all classes in the community—the farmer, the artisan, the manufacturer and the trader."

In 24 Am. Jur. 226 it is stated:

> "By the acceptance of a charter which confers on it the power of eminent domain and other valuable privileges, a railroad company assumes certain duties. It must exercise the functions for which it was organized, and in consideration of which the privileges were conferred."

The Interstate Commerce Act § 1 (4) states:

> "It shall be the duty of every common carrier subject to this Chapter to provide and furnish transportation upon reasonable request therefor."

In the much cited case of People v. New York Central and H. R. R. Co., 28 Hun. 543, a labor dispute resulted in a shut down. Such was brought to compel operation. After reviewing the facts the Court stated:

> "These facts reduce the question to this: Can railroad corporations refuse or neglect to perform their public duties upon a controversy with their employees over the cost or expense of doing them? We think the question admits of but one answer. The excuse has in law no validity. The duties imposed must be discharged at whatever cost. They cannot be laid down or abandoned or suspended without the legally expressed consent of the State."

Another case involving a work stoppage on account of a strike is McCran v. Public Service Ry. Co., 122 Atl. 205. In holding the street railway had to operate the court stated at p. 208:

> "The duty resting upon a quasi-public corporation must be performed or its privileges and franchises must be surrendered. It cannot assume to discharge its duty to the public on and off as it may find it profitable to do so."

In Loader v. Brooklyn Heights Railroad Co., 35 N. Y. S. 966, a strike interrupted rail service. In holding the railroad was still compelled to operate the Court stated:

> "It may not lawfully cease to perform that duty even for one hour. The directors of a private business company, may, actuated by private greed or motives of private gain, stop business, and refuse to employ labor at all, unless labor come down to their conditions, however distressing; for such are the legal, in-

BLEED THROUGH— POOR COPY

dustrial and social conditions. But the directors of a railroad corporation may not do the like. They are not merely accountable to stockholders. They are accountable to the public first, and to their stockholders second. They have duties to the public to perform, and they must perform them."

These basic fundamentals still prevail and the rights of the public are still paramount. The railroad still has the public duty to furnish transportation which cannot be avoided by becoming involved in labor difficulties.

In the present case we have the additional element that the District Court found that the railroad by following an obstinate, unreasonable and provocative policy in its labor relations disabled itself from being able to comply with its legal duty to furnish rail transportation. Consequently, this is a different case than one where the employer has been guiltless of any wrongdoing, and the rights of the public to transportation are not open to question.

II.

A Court of Equity Has Inherent Power to Take Such Steps as Are Necessary to Make Its Decrees Effective and Consequently Upon Issuing a Mandatory Injunction Against the Railroad It Had the Power to Restrain Everyone From Interfering With the Operation of Its Decree.

The Circuit Court of Appeals directed the District Court by mandatory injunction to order the railroad to provide rail service. It also directed the District Court to enter an injunction restraining interference with the railroad in its carrying out of the injunctive order.

In entering the injunction against interference it was endeavoring to preserve the dignity of its own decrees.

Courts have inherent power to protect themselves and their decrees, and to make them effective.

In Root v. Woolworth, 150 U. S. 404, the following is stated at page 412:

> "Where the Court possesses jurisdiction to make a decree, it possesses the power to enforce its execution."

Had the operation of the railroad been entrusted to a receiver as an officer of the Court, it would be unquestioned that the Court had the power to enjoin any interference with the receiver in his operation. In the present case, the Court ordered operation not by a receiver but by the management itself. To make its order effective and carry out its execution it had inherent power to enjoin interference with its operation.

Respectfully submitted,

JOHN E. CASSIDY,
JOHN F. SLOAN, JR.,
STANLEY W. CRUTCHER,
Attorneys for Respondent Shippers.

BLEED THROUGH— POOR COPY

FILE COPY

FILED
AUG 20 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 21

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, ET AL.,
Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, A CORPORATION, AND FARMERS GRAIN COMPANY, ET AL.,
Respondents.

MOTION OF RESPONDENT, TOLEDO, PEORIA & WESTERN RAILROAD, TO VACATE THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS AND TO REMAND THIS CAUSE TO THE DISTRICT COURT WITH DIRECTIONS TO DISMISS THE SAME AS MOOT AND MEMORANDUM IN SUPPORT THEREOF.

GUY A. GLADSON,
GEORGE W. OTT,
DONALD A. MORGAN,
Attorneys for Respondent, Toledo, Peoria & Western Railroad, a corporation.

BLEED THROUGH= POOR COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 21.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, ET AL.,
Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, A CORPORATION, AND FARMERS GRAIN COMPANY, ET AL.,
Respondents.

MOTION.

Now comes TOLEDO, PEORIA & WESTERN RAILROAD, one of the respondents in above entitled case, by its attorneys, and moves that the judgment of the Circuit Court of Appeals for the Seventh Circuit be vacated and this cause be remanded to the District Court of the United States for the Southern District of Illinois, Northern Division, with directions to dismiss the cause as moot.

In support of its motion, respondent submits the attached Memorandum.

GUY A. GLADSON,
GEORGE W. OTT,
DONALD A. MORGAN,
Attorneys for Respondent, Toledo, Peoria & Western Railroad.

MEMORANDUM IN SUPPORT OF MOTION.

On March 31, 1947, this Court granted two petitions for writs of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, which reversed the order of the District Court appointing a receiver for the properties and franchises of the Toledo, Peoria & Western Railroad and remanded the cause with directions to the District Court to issue a mandatory injunction against the Toledo, Peoria & Western Railroad, requiring it to provide transportation service under the protection of a further or ancillary injunction restraining interference with its operations.

One of the petitions for certiorari (No. 1047, October Term, 1946) was filed by the nineteen shippers who had brought their complaint in the District Court against the Toledo, Peoria & Western Railroad (T P & W) and thirteen Railroad Brotherhoods and seven of their officers to compel T P & W to fulfill its obligations under the Interstate Commerce Act to supply transportation to the public, which, it was alleged, T P & W was not furnishing because of a long standing labor dispute with the Brotherhoods. The position taken by the shippers in this Court is that the only effective remedy against the failure of T P & W to provide transportation is the operation of its properties through a receiver and that the substitution by the Circuit Court of Appeals of a mandatory injunction against T P & W for the receivership, which the District Court had decreed, did not afford adequate relief to shippers and the public.

The other petition for certiorari (No. 908, October Term, 1946) was filed by the thirteen Railroad Brotherhoods and seven of their officers, defendants in the District Court, who claimed that eleven of the petitioning Brotherhoods, to-

BLEED THROUGH– POOR COPY

gether with the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, were the designated representatives of all of T P & W's crafts or classes of employees. In their petition and supporting brief, the Brotherhoods urged as grounds for reversal that the injunctional relief which the Court of Appeals directed, violates both the Railway Labor Act and the Norris-La Guardia Act.

Case No. 908 and Case No. 1047, October Term, 1946, have been renumbered October Term, 1947, No. 21 and No. 42, respectively.

• • •

The following statement summarizes the facts essential to an understanding of the controversy which existed between the parties when the complaint was filed in the District Court and at the time the petitions for certiorari were filed in this Court.

On March 22, 1942, the President of the United States, by Executive Order, placed the T P & W under the management of the Office of Defense Transportation. On September 6, 1945, the Director of the Office of Defense Transportation ordered the return of management to the T P & W, effective on September 30, 1945. On September 13, 1945, the Brotherhoods requested T P & W's president to confer with respect to a continuation of the rates of pay and working conditions which had been in effect under Government management. The Brotherhoods and T P & W having failed to reach an agreement, practically all employees who were in the service of the Government during the period of its management withdrew from service on October 1, 1945.

On October 1, 1945, picket lines were set up by the Brotherhoods around the general offices of the T P & W at the Union Station, at the East Peoria Yards, where prac-

tically all of the rolling stock of the T P & W had been collected, and at other points, and were thereafter maintained.

T P & W's efforts to operate the railroad after October 1, 1945 were not successful. Its employees, and those desiring employment with it, were threatened with violence, and clashes between its employees and the armed guards which it employed, on the one side, and the pickets on the other, occurred, in one of which two persons were killed. These troubles grew in intensity. Connecting carriers for a time refused to interchange traffic, and one of them, The Peoria and Pekin Union Railway Company, as late as June 4, 1946, issued an embargo against all shipments to and from the T P & W. By June 1946, T P & W was able to offer only limited service, of carload shipments, not including perishables and livestock, originating at or destined to stations between East Peoria and Effner, Illinois.

On February 20, 1946, the shippers filed their complaint in the District Court. They alleged in substance that as a result of a labor dispute between the Brotherhoods and T P & W, the latter had failed to provide transportation service and had abandoned the operation of its lines, contrary to the Interstate Commerce Act. The prayer of their complaint was for appropriate equitable relief to bring about the prompt resumption of transportation service, including an injunction against T P & W, the Brotherhoods, and all other persons from further abandonment of operation of the railroad, and the appointment of a receiver to take possession of T P & W's properties and franchises and to reestablish its transportation service.

T P & W and the Brotherhoods denied the jurisdiction of the District Court to appoint a receiver and also denied that the railroad could not be placed in operation to perform its duties as a common carrier unless a receiver was

BLEED THROUGH-- POOR COPY

appointed. In its answer and cross-complaint T P & W denied that it had abandoned its railroad and alleged that it had been unable to operate the same due to the violent acts and unlawful conduct of the Brotherhoods, and that, if given adequate protection, it had available or could procure a sufficient number of employees to operate the railroad and render service to the shippers and to the public at large. By its cross complaint, T P & W sought injunctive relief against the continued violence and unlawful conduct on the part of the Brotherhoods against, or interference with the operation of the railroad.

The District Court heard evidence and, on June 6, 1946, entered its decree. The decree denied the motions of all defendants to dismiss the complaint; dismissed T P & W's cross complaint; appointed a receiver to take possession of T P & W's properties and franchises; and enjoined all persons from interfering with the receiver in the performance of his duties. Its opinion is reported in 66 F. Supp. 845.

On appeal by T P & W to the Court of Appeals, that court reversed the District Court's decree of June 6, 1946. It held that the appointment of a receiver for the sole purpose of operating the railroad, without limitation as to time, and not being ancillary to any other equitable or legal relief sought, was improper; that the shippers were entitled to a mandatory injunction against T P & W to compel it to provide transportation service; that "because of the history of this controversy", T P & W should be protected by an injunction against interference by any one in the operation of its lines; and that T P & W's cross complaint should not have been dismissed. It remanded the case with directions to the District Court to proceed accordingly. The opinion of the Court of Appeals is reported in 158 F. (2d) 845.

It was to obtain a reversal of this judgment of the Court of Appeals that, as stated above, the petitions for certiorari were filed, and on March 31, 1947 were allowed by this Court.

• • •

Since the filing of the petitions for certiorari and answers thereto in this Court, the following events have occurred which render this cause moot:

On March 10, 1947, George P. McNear, Jr., president of T P & W, was killed by a person or persons unknown. During the entire period of the controversy in this case, Mr. McNear was in control of the T P & W and its affairs. His will provided that his estate should be administered by Guy A. Gladson, a member of the law firm of Winston, Strawn & Shaw, of Chicago, and by J. T. Hunter, senior member of the law firm of Hunter, Kavanaugh, McLaughlin & Bond, of Peoria, as executors. It also established a long term trust of his entire estate under which Central Hanover Bank and Trust Company, of New York, New York, The Wilmington Trust Company, of Wilmington, Delaware, and said Guy A. Gladson are trustees. This will was admitted to probate on April 10, 1947 and thereafter a new board of directors and new officers were elected.

After two weeks negotiation between the Brotherhoods and representatives of T P & W, an agreement was reached on April 18, 1947 and, effective at 12:01 A. M. on April 21, 1947, the strike ended and the employees returned to work. By May 7, 1947, formal agreements had been signed by T P & W with each of the thirteen Brotherhoods. Since April 21, 1947, T P & W has been providing full and complete transportation to all shippers and to the public except as to perishables which T P & W was required to ice. This exception was removed on June 4, 1947, when T P & W's ice plant was placed in operation. Since April 21, 1947, except as to perishables which T P & W was required to ice, and since June 7, 1947, as to all commodities, T P & W has been and is now providing full and complete transpor-

BLEED THROUGH- POOR COPY

tation service to all shippers.

Upon the settlement of the labor dispute and the restoration of complete transportation service over the lines of the T P & W the foundation of this suit has disappeared. No controversy with respect to any issue in this case now exists among or between the respective litigants. The labor dispute which caused the interruption of service has been amicably settled. All embargoes have been lifted. The T P & W is now and since June 7, 1947, has been fully discharging its obligations to shippers and to the public generally. The conditions which existed when this suit was filed in the District Court and at the time this Court granted the petitions for writs of certiorari and which, in the opinion of the courts below, called for equitable relief, no longer prevail and there is presently no necessity for such relief. The case has become moot.

Accordingly, it is respectfully submitted that under the authority of the applicable decisions of this Court, the judgment of the Circuit Court of Appeals for the Seventh Circuit should be vacated and the cause remanded to the District Court of the United States for the Southern District of Illinois, Northern Division, with directions to dismiss the cause on the ground of mootness. *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360; *U. S.* v. *Alaska Steamship Co.*, 253 U. S. 113; *Montgomery Ward & Co., Inc. et al.* v. *U. S.*, 326 U. S. 690.

A similar motion and memorandum have been filed in Case No. 42 (No. 1047, October Term, 1946).

Respectfully submitted,

GUY A. GLADSON,
GEORGE W. OTT,
DONALD A. MORGAN,
Attorneys for Respondent, Toledo, Peoria & Western Railroad.

OCTOBER 13, 1947.

Per Curiam Decisions.

No. 21. BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, LOCAL LODGE No. 926, ET AL. *v.* TOLEDO, PEORIA & WESTERN RAILROAD ET AL.; and

No. 42. FARMERS GRAIN CO. ET AL. *v.* BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, LOCAL LODGE No. 926, ET AL. Certiorari, 330 U. S. 816, to the Circuit Court of Appeals for the Seventh Circuit. *Per Curiam:* The judgment of the Circuit Court of Appeals is vacated and the cases are remanded to the District Court with directions to dismiss the complaint as moot, on motion of the respondent, Toledo, Peoria & Western Railroad, it appearing that counsel for the Brotherhood of Locomotive Firemen and Enginemen et al. agree that the cause is moot. *Louis F. Knoblock, Harold C. Heiss* and *Russell B. Day* for petitioners in No. 21. *John E. Cassidy* for the Farmers Grain Co. et al., petitioners in No. 42 and respondents in No. 21. *Guy A. Gladson, George W. Ott* and *Donald A. Morgan* for the Toledo, P. & W. R. Co., respondent in Nos. 21 and 42. Reported below: 158 F. 2d 109.

BLEED THROUGH- POOR COPY